CUSTOMS

Of our

ANCESTORS.

Touching

The Duty, Power, Election, or Succession

Of our

KINGS

AND

PARLIAMENTS,

OUR

True Liberty, due Allegiance, three Estates, their Legislative Power, Original, Judicial, and Executive; with the MILITIA.

Freely discussed through

The *British*, *Saxon*, *Norman* Laws and Histories.

WITH

An occasional Discourse of *GREAT CHANGES* yet expected in the World.

LONDON: Printed for J. Kidgell. 1682.

104873

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OR

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Teaching

KINGS

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OR

The Liberty, the Allegiance, the Estate,
the Legal Power, Original Induction, and Ex-
tent of all

The British, Saxon, Norman, and Natural Princes,

As occasional Discourses of NEAR CHANCES
Occurred in the World.

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PREFACE
READER.

104873

me.

It is no matter who, but what, is here presented to your view: I cannot excuse it, either for matter or manner. It hath much folly to any sight, and more, I believe, than yet I see. It may be also somewhat false, although I know it not. This should not prejudice all, for there are Spots above the Clouds, and the Kingdom of Heaven it self was like a Field of Wheat with many Tares: How much more, how much worse must it be with a frail man!

But why then do I venture to come-

[illegible]
[illegible]
[illegible]
[illegible] nothing
but Dot, should have persuaded
or prevailed on me to be publick
with; and yet I do not plead an
extraordinary Call, which is a
close Writ, and not a Patent.
Those who receive and act by
such a Warrant, should be sure
they know the Hand, or Seal, or
Dialect of Heaven.

But I am an English-man, and
therefore am obliged to this
Country, and to these Laws that
made me free. And this may be
some Call, that I say nothing of
particular Obligations to the
State, in any Courts of Justice, or
relation to the highest Court of
Parlia-

Parliament. And why may not I believe my self as free to *think*, or *speak*, or *write*, as others are to do?

There is a Night of silence, and an evil Day; when every *prudent man shall hold his peace*; but also there is a time to speak, and a word in season, fitly placed, like *an Apple of gold in a Picture of silver*. But who knoweth his season? for our time is hidden; and because man knoweth it not, therefore is his labour increased under the Sun. This also is vanity, and a sore vexation.

I said, there are older, and wisser, and better than I; they shall speak and teach me Wisdom: I will hear in silence. Nor do I now say, *They convinced him not, lest it should*

be

free: for if I ſpeak their words, I may be pardoned, as thoſe that ſpake before: And if I adde a new word, ſhall I be made *an Offender for a word?*

However, my hope is, that the Great Day of Judgment (of which we have long heard, and now ſeen ſo much before us) will have ſuch influence upon our Judgement and Affections, that we ſhall all be ready to judge our ſelves, rather than others; or if others, not with prejudice. And with this

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RIGHTS

OF

The Kingdom,

&c.

TO see the Kingdoms *Rights*, the *Laws* and *Customs* of our *Ancestors*, concerning *King* and *Parliament*; that we may know their *Power* and *Priviledge*, their *Duty* and their *Limits*, &c. and how our Fathers did commit the power of making Laws, and judging by those Laws; and how they made us swear

Allegiance to our King; what power they gave him over us; and what they did not give him o[illegible] be-h[illegible]

He [illegible] these [illegible] en-quiry [illegible] said to the *Persians*) not to have heard of Liberty: *Which else would be valued above an Enquiry.* But alas, who is able! who will undertake to trace our *Laws* and *Customs* thorough the Heights and Depths, and dark Abysses and Meanders of the *British*, *Saxon*, and the *Norman* Nations that have ruled here? Yet there are thousands that may do it much better than I; and therefore I might justly sit in Silence, and expect my Antients and my Betters should begin, that I might learn from them. Nor should I now presume to speak, but that I might inform my self from others, that by this occasion may reform my Errours, and may [illegible] our Laws and Customs, much more full [illegible], or can be able; who pretend to [illegible] desire of Truth and Peace.

And

And first, to speak of the mutual obligations of Oaths between Prince and People, the School-men would be thought most curious, or most tender in the point of Oaths: They mince them out so fine, that a whole million of Oaths may stand (as they speak of Angels) on the point of a sharp Needle.

They tell us of the *Object*, and the *Subject*, or the *Matter*, which they say, may cease or fail so much, that any man may find or make himself absolved from his Oath. But in things of such concernment to one's soul, I love to speak or think in *English*, that I may understand myself; and I thought it madness in the man that said his Prayers in two or three Languages, adding this in the close, *Now take thy choice, for all are alike to me; I know not my meaning in either.*

In plain English, I do not see I may absolve my self from an Oath by saying, he was not the man I took him to be, in some material points, at the time of my Oath; yet this is much, and that which reacheth near to that which

which the Schools ſpeak of, want of Subject, or ſufficient Matter to be ground of ſuch an Oath.

I ſhould have looked to that before; it may be raſh, and ſo muſt be repented: but a River of Tears may never waſh me from this Oath of God, as the caſe may ſtand. And ſo it was, I ſuppoſe, in that of the *Gibeonites*: they were not ſuch as they made themſelves, nor ſuch as *Iſrael* took them for: the Oath was raſh, unjuſt; they ought not to have ſworn; they ſhould have ſtayed and ſought direction: for they were forbidden Leagues with ſuch, commanded to deſtroy and ruine ſuch as thoſe men were, and might have been ſuſpected. But when it was done, we ſee how ſtrict and ſolemn God was ſtill, in preſſing them to keep that Oath.

Nor may it ſuffice to ſay, *I ſwear againſt my will; they had advantage of me; and I could not but comply, either with ſome Mental Reſervation, or at leaſt* (for that is much condemn'd by moſt) *I am now grown wiſer, and do now ſee I may abſolve my ſelf from that which I would not have taken, but by force or fraud.*

But

But can the World, (this vain and frail and foolish World,) command, controll, and overawe my Soul, to take an Oath, *the Oath of God*, to what I think unjust? It may be so, for I am Man and frail, with those that are the weakest; for *He knoweth my foolishness*: but it should not be, and when it is, I must be very tender, lest I adde more Sin to Sin; as bad, or worse, to that which is too Bad already; For, by breaking such an Oath, I may do worse, much worse, than first I did in making it; except I Swore to sin, and then I may not keep my Oath.

And I believe the *Jews* might not have pleaded Force, or over-awing Arguments, in Swearing Homage to the King of *Babylon*; and yet 'tis known how God did charge and chasten that said Perjury; nor is it altogether inconsiderable that good *Lot's*, or at least the men of *Sodom's* freeing themselves from *Chederlaomer*, is stiled by God himself, plain downright *Rebellion*; Yet there was another King of *Sodom*, and *Chederlaomer* seemeth but a kind of Tyrant, that had but little Right but Conquest and his Might.

The *Catholicks* may seem too free in dispensing with *Oaths* to *Protestant Kings*; but some there are with them, *Sacred* Persons: And because I

now dispute *ad Hominem*, I shall touch on that in which we know them most Religious, Their solemn Obligation to the *Pope*; which yet is such, they will not deny, as doth not secure or free him from being *Judged*, or *Coerced* in cases of *Distraction*, *Natural* in Raving, or *Moral* in Raging, so that danger be apparent to those about him, or in some Spiritual Frenzie of notorious *Heresie* Convict (the Chair in Conclave, not the Person is exempt,) or much suspected; while himself refuseth Legal Tryal by a Council or the like. The Case is argued in *Ocehams Dialogues* with others.

Our Oath of *Fealty* comes next upon the *Test*, although I might interpose (as a Paralle! to the Pope) the *Jewish* High *Priest*, a very Sacred Person, and the Lords Anointed also; but yet such as must still submit to the Sentence of the Great *Sanhedrin*, nay, and that for his *Life* also if they so adjudged him. For which of the *Sanhedrins* Power over the Jewish *King*, in Criminals and in *War*, (except only what God had commanded against *Amaleck* or the seven Nations,) I might cite several clear passages from the *Talmud*, and those that expound it long before *Cochius* or *Sanhedrin*, or *Schickards Jus Regium*.

Our

Our Land seemeth to Mourn because of Oaths (but I must only touch the civil Part, or what is Legal,) and our Law seemeth Deficient in this of Oaths, for there is scarcely any Law (since the Star Chamber) to punish *Perjury*; but only where it is before a Court of Justice; and there also the Punishment of *Witnesses* is very light, and exceeding short of *Attaint*, on Jurors, by the Common Law.

Our Customs seem to overgoe our Laws, in much of *Oaths*, They were but *Attestations*, though most Solemn, in the Name and Presence of God, *As the Lord doth Live.*

But they are now brought to *Imprecations*, or a kind of Curse, *So help me God, and the Contents of this good Book.* Yet so it was of old at *Combat*; on Appeal; the *Appellé* did first devote himself.

Again, some force a *Kissing of a Book*: the Law requireth but a *Sight* and *Touch.* For ought I find, the *Saxon* Jurors were *Sacra Tenentes.* In the first *Norman* times, it was *Sacris Tactis*; and in later writs, *Evangelijs Tactis*; Nay, the *Priests* hand was upon his *Breast*, (in *Matthew Paris*) not upon the *Book*, and the *Villain* seemeth forbidden to touch the *Book.* The Statute saith,

he ſhall hold his Hands over it, but the *Freeman* upon it; and from this *Touch* with the *Body*, ſuch an Oath was called *Corporal*.

The *Jews* and eldeſt Chriſtians, (in their Swearing, Bleſſing, Praying,) lifted up the *Hand*, and ſometimes Bowed the *Head* or *Knee*; for, *In his Name ſhall all Knees bow*, ſeemeth but Parallel to that of the Pſalmiſt, *In thy Name will I lift up my Hand*; and the *Grecian* or *Trojan* Princes, lifted up their Scepters in Swearing, but others held Earth and Water, in Alluſion perhaps to the ſacred *Styx*.

Moſt, if not all publick Officers were tyed to their Dutyes, by ſome Oaths, but they were made by *Parliament*, in all Ages; This being a Pillar in our Laws, that none can make, alter or impoſe an Oath, without an Act of *Parliament*, or Cuſtom by the Common Law.

'Tis ſtrange, how much in all we degenerate from our good Anceſtors; So that with us to break ones Oath, (even in the greateſt Office) is but a kind of Petty *Aggravation* (as they call it) rather than a Crime; becauſe ſuch Oaths be now accounted but meer Forms, or Ceremonious Shaddows.

But it was not ſo, *ab initio*; and among other

Precedents, I find the old *Mirrour*, ſpeaking of a *Chancellour* of *England* charged with Perjury, for taking a ſmall Summe of Money (half a Mark,) for Sealing of a Writ, which was againſt his Oath; being neither to *Deny*, *Delay*, or *Sell* Juſtice or Remedial Writs. (Yet Six Pence was allowed to the King for Sealing of a Writ.) How great a Crime they did account ſuch *Perjury*, I need not ſay to Lawyers, or to any that have read the *Saxon Parliaments*.

But of all our Oaths, thoſe ſeemed to be moſt content to be counted Formal, That they were impoſed on meer *Children* of a dozen Years old; how many ſuch we have or had in great Schools or Univerſities, may be known and felt too much I fear.

And the Oath of *Allegiance* was twelve Years old, and ſo preſſed at the *Leets* or *Turns*; but did they mean we ſhould Obſerve it but as *Children*, not as Men or Chriſtians? It is true, the *Saxons* alſo had a twelve-Year-old Oath, but againſt *Theft*; and how the Laws of *Henry* the firſt did Annul the *Oaths of Children* was obſerved, and the fifty ninth Chapter of thoſe Laws forbiddeth any to Plead, or to be Pleaded *in Judicio*, till the Age of fifteen.

It

It was also a Maxim in our Law Books, that *Minors* could not Essoyn, because they could not Swear; and that *Homage* might be done in *Nonage*, but not *Fealty*: For although *Homage* was the more *Honourable*, done upon the Knee; yet *Fealty* was the more *Sacred*, being ever done by *Oath*; and from hence is the usual Phrase in all Lawyers and Historians, to Do *Homage*, but to Swear *Fealty*.

Must our *Allegiance* only, run before our Reason or Discretion? which yet was our *great Fealty*; for it differed little from *Homage*, with the Oath of *Fealty* to *Mean* Lords, but in the *Salvo*; which I touched before, and must again, being one good help to explain our *Allegiance*.

I shall acknowledge that *Allegiance* ought to have been kept by all Subjects, although they never took that Oath; which it may be, many did not, especially, since the late Oaths of *Allegiance* and Supremacy; which have seemed to abate the use, (I say not the Force) of the old Leet Oath of Grand *Fealty*; Which was perhaps never taken, or much understood by some of those that appear most zealous in crying up *Allegiance*; For it is natural to us all, to be most confident in that which we least understand.

They

They seem to have done much wrong to the King and Crown, (and to have made so many averse from the very Name of a King,) who by too much Zeal did strain our English Legiance out beyond all bounds of English Laws, and then they would fly out to Forreign Laws; as if the Moulds and Sphears of Kingly Power or Subjects Duty, were by nature equal in all Climates, and in every Kingdom.

Yet I know not that we need be much afraid to appeal to the Laws of any Civil State, especially to those of *Judah*, which if some had known more, they would have pressed less for our Pattern: But all English Kings had English Bounds by Law; and so we Swore *Allegiance*, and no otherwise by Law.

It was a Pang of Zeal or strange Affection, more than Reason or Religion, which did make so many once (at *Cambridge*) Swear to *Edward* the Senior, *To Will what he Willed*, &c. Of which the *Saxon Chronology*; But I hope it is not fatal to that Place, or to any others in this Kingdom.

For I cannot learn that e're our Law did force or wish us to oblige our selves by Oath, to Think, Speak or Doe as any King would doe,

doe, or have us for to doe, if contrary to Law and right Reason.

Our Law dispenseth much with Womens *Homage*, and of old they were not pressed to it; for a *Woman* might not say, I am your *Man*, nor to a man, (but to her own Husband) *Sir, I am your Woman*, yet she was to Swear *Fealty*.

So were the Bishops also to Swear *Fealty*, (except in *Frank almoigne*,) but the Law dispensed with a Bishops (or Church-mans) *Homage*, so that he needed not to say, *My Lord, or Liege, I am your Man*. The Reason is, because he was (or should be) *the Man of God*, and might not give himself so much away to others, as any other whatsoever.

And the reason of this may reach to all our *Fealty*, so far as to perswade us to consider what it is we cannot, nor we may not give away to any Man or Angel.

Was it not an hard Covenant tendred by *Nahash*, that he would protect all those, or own them for his Subjects, that would put out their right Eyes? and yet this had been more reasonable and Just, than to have required absolute *Allegiance*, without any Limitation or *Salvo*

at

at all: For this had been to have bid them pluck out their *Souls*, or at leaſt to uncaſe them from that which nature hath made the *Cabinet of Souls* (that curious Orient *Mother of Pearl*,) *Right Reaſon*, which doth make us *Men*; that I ſay nothing of that which makes us Chriſtians or Religious Men.

We ſinned if we wholly gave our ſelves unto a King, without any Limitation or Reſtriction whatſoever: For by ſo doing we unman our ſelves, and give away to a Man what we owe not, what we may not give to any mortal Creature whatſoever.

Let us diſcuſs it then by Law and Reaſon, what is our Legal *Fealty*, how Made, how Limited, how Kept, or how Diſſolved. Let us inquire what Duty, what *Allegiance* is commanded by the Laws, and what they did not mean they would not have us give to mortal Man.

Shall we behold the Sun Reflected or Refracted in a Stream of Water? ſhall we conſider the King as Cloathed in the Dreſs or habit of ſome other Lord? For every Lord (the meaneſt and the loweſt) is, or may be to his Vaſſals, as a little King to his Subjects: Such was the Plea of *Lanfranc* (as before,) at *Pinenden*; and ſo it was adjudged and confirmed by that Parliament, that he ſhould be in his *Demeſn*, as was the *King in his*.

And the old Laws of *Alfred*, *Ethelſtane*, *Edgar* and *Canute*, with the good Laws of *Hen.* the firſt, do as much forbid and puniſh Treaſon againſt inferiour Lords, as againſt the King himſelf; for to them alſo is *Homage* done, and *Fealty* Sworn by their Vaſſals, ſaying, *My Liege, I am your Man, and bear you Faith of Life, Member and Terrene honour, ſaving the Faith I owe to other Lords.*

Or thus, *My Lord, I will bear you true Faith, and do you true Service, as my Duty to you is,* (ſo the Statute of *Edw.* the Second) that is, *according to my Fee.* And the *Mirrour* will tell us, that it was an Abuſe for the King himſelf to require it any otherwiſe; for it did not conſiſt in a Point, but had much Latitude, and ſeveral Degrees, according to the ſeveral Fees.

And if any ſuch Tenant were preſſed on more Service or other than his Fee required, or were injured; he might Implead his Liege in Law: For what his Duty was, neither himſelf, nor his Liege Lord might determine, but the Law.

For a *Villain*, who of all Vaſſals, was moſt Fettered, (moſt forbidden to moleſt his Lord,) yet might be *Demandant* in ſome *Real*, or *Plaintiff* in ſome *Perſonal* Actions, where the Lord might not make plain defence (as they ſpeak.) Nay, and *Villains* alſo did often bring Actions of *Treſpaſs*.

And in Caſes of others, as of *Orphans*, where the

the *Villain* is Executor in Truſt, he may implead his Lord, who can not deny to anſwer, though he do it with a *Salvo*, leſt ſuch a Suit might make his Villain free, as much as if he had made him an *Obligation*, or a Deed of ſome Annuity, or a Leaſe for Term, or Infeofment with Seiſin, or had ſued him in Law for what he might have had without a Suit.

For theſe did *Enfranchiſe* the *Villain* as much as being in a City, or Caſtle, without claim or Challenge for a Year and a Day, or his Lords giving him (by the Right Hand) to the *Sheriff* in full *County* Court, ſhewing him the open Doors and free wayes, and delivering to him a Sword and a Lance, or other Free Arms, which are the wayes of *Manumiſſion*, in the Laws of King *William* and *Hen.* the firſt, where we alſo find the Text ſo much Commented by *Glanvil*, *Bracton*, *Britton*, *Fleta*, with the *Mirror* and others.

They all agree in this, that the Bond and Obligation is *Mutual*, and that the Lords Kiſs whiſpereth as much Reſpect and Defence, as the Vaſſals Kneeling doth his Reverence; Nay, there is in Law ſo great an Obligation on the

Lord, and ſo great a Charge often, in *Guarranty*, (which of old was much larger than now, in *Homage Anceſtrell*;) That the Lord would often refuſe and delay to take his Tenants Homage; So that there was a Writ made, commanding him to take it, and by it, to Oblige himſelf to his Tenant, whom he was to Defend; and his Treſpaſs on him in Law, had a very great Aggravation; becauſe the Vaſſal was to be *ſub defenſione Ligea*, as we found the *Jews*, in the Laws of the *Confeſſor*.

Some Kingdoms are in Fee to others, and muſt do *Homage*, Swearing *Fealty*; So *Scotland* unto *England*; ſo was alſo our *Engliſh* King, but not the Crown or State, (which hath oft in Parliament been adjudged and declared Imperial, Independent;) when himſelf did *Homage* unto *France*.

And yet I do not find our Engliſh King did ever much Scruple at his waging War with all *France*, and the French King alſo; but did often fight in Perſon againſt his Perſon; and he might do ſo by Law, if the King of *France* did Injure and Oppreſs him againſt Law: That I ſay nothing of the Perſonal Challenges by *Rich.* the firſt, *Edw.* the third and *Rich.* the ſecond;

ſecond ; Or of King *Johns* being cited or Condemned by *France*, for *Murther* in that Kingdom.

This might yet be enlarged, and further cleared, from the good Laws of K. *Henry* the firſt, which are ſo ſtrict for Allegiance and due Fealty to every Lord, that they ſeem almoſt to forget our old Engliſh Clemency ; and yet they ſpeak enough of a Vaſſals impleading, *&c.* his Lord, for which divers Chapters, from the 40th to the end, are very conſiderable.

And the 55th Chapter limiteth all Homage and Fealty, *per honeſtum & utile*, that which is honeſt and profitable ; and as *Honeſtum* there reſpecteth God and the common Faith, (*Deum & fidem Catholicam*,) ſo muſt *Utile* reſpect the Kingdom, and the *Common good* ; it being uſual for thoſe times to expreſs the *Common Good* by ſuch a Phraſe of *Utile*.

So the Laws of St. *Edward* (for *Foromotes & Heretokes*,) *ad Honorem Coronæ, & ad Utilitatem Regni* ; So King *Williams Additions* were granted and Confirmed, *ad utilitatem Anglorum* ; So the Parliament at *Merton* was to treat, *de communi utilitate Regni* ; (which may be conſidered in the Writs of thoſe times,) and the great

Charters

Charters granted, *à tout la commune Dengleterre*; (as *Articuli Juper Chartas*) And the first of *Westminster*, *pur le common profit de St esglise & de Realm*; and the *Confirmations of the Charters* in *Edw.* the first, forbidding all Impositions, &c. but by *Common assent* of all the Realm, & *pur le common Profit de ceo*; which must be determined by *Commune assent*, and no otherwise; So *Ethelreds* Law, *Efferatur Concilium quod Populo Utilissimum*; And *Canutes*, *quæ ad Reipublicæ Utilitatem & Commune commodum*, which there may Paraphrase *Regalitas*, of which before.

And (however the late Oaths of Allegiance are,) if we consider the old Oaths, both in the *Saxon* and first *Norman* times, we shall find them to respect the Kingdom and its common Good and Profit, as well as the Kings Prerogative or private Profit to the Crown.

By *Bracton* with others, we are led to the Laws of the *Confessor* for our great *Allegiance*; But in those Laws, the Oath is to *defend the Kingdom* with the *King*; and that by such an Oath we should all be, *sicut conjurati Fratres, ad defendendum Regnum, contra Alienigenas, & contra Inimicos, unâ cum Domino Rege*, &c.

That it was so also in the *British* times

of

of K. *Arthur*, (whoſe Parliaments we may aſſert by more, than that in *Caius* of *Cambridge*,) we find in theſe very Laws, and that by Vertue of this Oath, King *Arthur* raiſed his Subjects, and expelled the *Saracens* and Enemies *a Regno*, from the *Kingdom*.

And the ſame Laws tell us, that the ſame Oath was renewed and Confirmed by K. *Edgar*, whoſe Laws are ſevere enough for *Treaſon*, but againſt *all Lords* as well as the *King*; and it is Puniſhed, as *Theof*. And the Laws of *Canute* (confirming thoſe of *Edgar*) require *Fealty* conjoyned with *Duty* and *Virtue*; and again with Common Juſtice, *Jusjurandum datamque fidem Religioſiſſimè ſervato, injuſtitiam pro ſua quiſque virili Parte, ditionis noſtræ finibus omnem arceto*, as *Lambard* tranſlateth the *Saxon* of thoſe Laws; and in another place of them, *The Leet Oath of Fealty, Jure Jurando fidem det, omni ſe in poſterum ætate, tum furti, tum furti Societate & Conſcientia temperaturum.*

And to this doth King *Edwards* Oath of Allegiance (in *Britton*) ſeem to allude, *que ilz nous ſervount Feaul & Leaux, & que ilz ne ſervount Felons, ne a felons aſſentaunts*; yet I do not deny, but *Theof*, in this Oath might include *Treaſon* with

with other Felony, (as vvas touched before) (but however, it is as well for the *Kingdom* or the Common good, as for the Kings Prerogative, or private Honour of the Crown.

So alſo the firſt *Norman* Laws (called the *Conquerors*) require an Oath of *Allegiance*; but for the Publick Peace and common Juſtice, to the Kingdoms good as much as to the Crown; for ſo the words run, *ſint Fratres conjurati ad Regnum N. contra inimicos defendendum, & Pacem, & dignitatem N. & Coronæ N. & ad Judicium rectum & Juſtitiam, conſtanter modis omnibus pro poſſe ſuo,* (as K. *Canutes* Laws before,) *ſine Dolo, & ſine dilatione faciendam.*

This is now continued alſo through our great Charter, and all the Confirmations of K. *Edwards* and K. *Williams* Additions, *in utilitatem Anglorum*, vvhich may be conſidered as a good Comment on the uſual vvords in *Indictments* againſt the *Peace*, and *Crown*, and *Dignity*, vvhich by thoſe Ancient Lavvs, vvas to be joyned vvith the publick common good and Juſtice of the *Kingdom*; So that *Allegiance* vvas *ad Legem*, to the *Laws*, the *Kingdom*, and the *Kingdoms good* or *Profit*, together vvith the *King*.

And in all the Lavv Books vve may read

of

of *Treason* done and committed against the *Kingdom*, as against the King; So in *Hengham Parva*, cap. 3. If any raise War against the *King*, or against the *Kingdom*, *ubi quis movet Guerram contra Regem, vel Regnum*; And his Commentator referreth to several Cases in *Edward* the third, *Henry* the fourth, with *Plowden* and others which would be considered.

Nay, there are many old Authors and Masters of Law, that expresly declare it to be as *Real Treason to seduce the King, or the Kingdom*, or an *Army* for the Kingdoms Safety, as to Act against the *Kings* Life.

So in *Hengham Magna*, cap. 2. *Treason* is branched thus, *de Nece, vel Seditione Personæ Domini Regis, vel Regni, vel Exercitus.* And the very same Division of *Treason* is in *Glanvil*, both in his first Book and second *Chap.* and the first *Chapter* of his 14th Book.

To which also may be added *Bracton*, Lib. 3. cap. 3. *de Coronâ*; and *Fleta*, lib. 1. cap. 21. *vel ad seductionem ejus, vel exercitus sui*; and *Britton*, cap. 22. *disheritur de N. Royalme, ou detrahit N. Hoste*; of which also *Stanfords* Pleas of the Crown, *lib.* 1. *cap.* 2. and others that Wrote since the Twenty fifth of *Edward* the third, which may seem to limit or to lessen high Treason,

but not to annul Treason by the *Common Law.*

And in Cases of such *Treason*, they declare, that although there be no Accuser, but only Suspicion (*sed fama solummodo publica*, so *Glanvil*; but in *Bracton*, *Fama apud graves & bonos*; and in *Fleta*, *apud bonos & graves infamia*;) yet must the Party be Attached *vel per Carceris Inclusionem, vel per Plegios idoneos*; so it was in *Glanvils* time, (for all but *Homicide*,) but in *Fleta's*, *Diffamatus vel Accusatus, attachiabitur per Corpus, & Captus Remanebit, donec se inde Legitime acquietaverit.* That is, (in him,) till he have Legally cleared himself from all Seducement of the King, Kingdom, or Kingdoms Army; *Omnemque seductionem Regis, Regni vel sui exercitus, & quicquid sit contra Pacem suam*; which *Glanvil* expresseth thus, *Machinatum fuisse, vel aliquid fecisse in mortem Regis, vel seditionem Regni, vel Exercitus, vel Consensisse, vel Consilium dedisse, vel Authoritatem præstitisse.*

In such Cases also they debate who should be *Judge*, and for this they all agree in that fundamental Principle of right Reason and Nature, that *Parties* may never be *Judges* in their own Causes; for which, besides all others, the

Mirror

Mirror is large and clear among all *Exceptions* to the *Judges* Perſon, (if he have no Commiſſion, or refuſe to ſhew it as he ought, or be Party, &c.) of which alſo *Bracton* in *Appeal*, *cap.* 22. *fol.* 41.

And for this reaſon *Bracton* and *Fleta* with others, agree that in ſuch Cauſes, neither the *King* (who might, ſo they ſay, be *Judex & Actor*,) nor the Kings Commiſſioners ſhould Judge or determine: But *Curia & Pares*, except only when the Caſe is not of Life, but finable; for in ſuch the Kings Commiſſioners may determine *ſine Paribus*.

But who are theſe Peers, and what is this Court? One of *Bractons* firſt Maxims (in his ſecond *Chap.*) is, that all obſcure, difficult and new Judgments, ought to be ſuſpended, *Uſque ad magnam Curiam, & ibi per Conſilium Curiæ terminentur*.

Fleta is ſomewhat clearer, (in his ſecond Book and ſecond *Chap.*) *Habet enim Rex curiam ſuam in Conciliо ſuo, in Parliamentis ſuis preſentibus Prelatis. Com. Baron. Proceribus, & aliis viris Peritis, ubi terminatæ ſunt Dubitationes Judiciorum, & Novis injuriis emerſis, Nova conſtituuntur Remedia, & unicuique Juſtitia, prout meruit, Retribuetur. Ibidem.*

Unicuique! What, to every Man in all the Kingdom? or how far, and how high may this extend or reach? Shall we propound this Doubt to the Antient Parliaments, who were most like to know their Power and Priviledge?

The Law was clear enough before, but some were pleased not to think it so; and therefore in the Statutes of *Marlbridge*, (as old as *Henry* the third) in the first place of all it was agreed and enacted, That *all men Living of this Kingdom*, as vvell high as lovv (*tam Majores quam Minores*) must and ought submit to Judgment, *Justitiam habeant & Recipiant in Curia Domini Regis*.

That this Expression may go lovver than the Court of Parliament, I can not deny; nor vvill others, I suppose, deny but that it may and must be yielded to the highest Court of all.

One of the Clauses of the Kings duty expressed in the *Saxon* Lavvs, is to do all things rightly by the Judgment of his great Court, *per Judicium Procerum Regni*; and again, by that great Council to maintain or do Justice and Judgment, *Judicium Rectum facere & Justitiam tenere per Concilium Procerum Regni*.

All vvhich, and much more in those Lavvs, must

muſt be ſolemnly Svvorn by the King, before the Kingdom and the Clergy, *in propria perſona inſpectis & tactis Sacroſanctis Evangeliis*, &c. *coram Regno & Sacerdote & Clero*, (This may be conſidered) *antequam ab Archiepiſcopis & Epiſcopis Regni Coronetur*; Even *before he may be Crowned*, or ſhould require his Subjects *Homage*.

Inſomuch that vvhen the Subjects have tendered *Homage*, (as ſome Lords did to King *Henry* the fifth) before the King had done his *Homage*, and Sworn his *Fealty* to the State and Laws; It hath been obſerved by Hiſtorians, as ſome kind of *Comet*, that I ſay not a *Prodigy*, in State Politicks.

And beſides all the forms of Coronation found in *Howden*, *Walſingham*, and other Hiſtorians, (*ſecundum antiqua Statuta*, as *Matthew Paris* ſpeaketh,) it is clear enough in the Records and Rolls of *Richard* the ſecond (before others,) how the King firſt did take that Solemn *Oath*; and then the Archbiſhop went to every ſide of the Scaffold, relating to the Kingdom how the King was Svvorn; and then he asked them, *ſi ipſi conſentire vellent*, if they would now *give conſent* to take him for their *King* and *Liege* Lord; and if ſo, they came and did him *Homage*.

If

If they would consent! What, was it at their *Choyce*? and were our English Kings *Elective*, plain Elective? sure it would be duely weighed, and I confess some things have made me very much suspect they were *Elective*.

And the rather also by considering the great Care and Importunity of some Kings, to procure the Crown to be setled by *Parliament* upon their *Heirs*; Which might intimate that indeed it was not their *Inheritance* at Common Law; for it was seldom seen, I suppose, that English Men have taken much Pains to obtain an Act of Parliament to settle their *Inheritance* on their own *Heirs*, except they were *Illegitimate* or *Aliens*.

And upon search, I cannot find the old Oaths of Allegiance did relate to the Kings *Heirs* or *Successors*, either in the *Saxon* or first *Norman* times, although we find the Oath in old Laws, long before *Edw.* the second, and in old Lawyers, *Bracton*, *Britton*, *Fleta*, with the *Mirror*, punctual in the Oath of *Allegiance*, but not a Syllable of *Heirs* or *Successors* that I can find.

Yet in the times of *Henry* the first and *Henry* the second there was some special Acts of Parliament for setling the Crown on *Maud* the

Empereſs

Empereſs or her Iſſue, and King *Henry*'s Son was Crowned in his Fathers Reign, and of that time the *Salvo* in *Glanvil*, *Regi & Hæredibus*, which I find not in any other old Lawyer; and I believe it not uſual till the great Quarrels of *York* and *Lancaſter*, it may be much Later.

But all ſuch Acts (for tying the Crown to ſuch or ſuch a Family) do not evince a former Right of *Succeſſion*, any more than the Houſe of *Auſtria* doth prove the *Empire* not to be *Elective*, though it now ſeem as entailed on that Family.

I ſay not how often it hath been adjudged that *Affirmative* Statutes do not annul the *Common Law*; and that one may *Preſcribe* againſt a Statute *Negative*, but in *Affirmance* of the *Common Law*, (for which the Comments on *Littletons Burgage*;) So that if an Engliſh King was *Elective* by the *Common Law*, the Kingdom might preſcribe againſt late Statutes which might erre much more than they could oblige all future Parliaments, but they might ſtill be free, and moſt of all in what was due before by Common Law.

Let us diſcuſs it then, and ſee what Antient Lawyers and Hiſtorians do record about our

Kings, their limitations by our Laws, their Title by Succeſſion or Election at the Common Law.

If *Bracton* or if *Fleta* may be Judges of this Queſtion they will tell us, that in their times our King was *Elective*; *Non a Regnando dicitur ſed a Bene Regendo, & ad hoc* Electus *eſt*; And again, *ad hæc autem Creatus Rex, &* Electus, *ut Juſtitiam faciat Univerſis*; *Not only Created*, but *Elected*, it is where they treat of *Judges* and of *Juriſdiction*.

And of our *Saxon* Anceſtors, the *Mirror* is very plain that they did *Elect* or chuſe their King from among themſelves, *Eſlierent de eux un Roy à reigner ſur eux*; and being *Elected*, they did ſo and ſo Limit him by *Oath* and *Laws*.

In this we might appeal to *Tacitus* of our Anceſtors, For theirs, who did both *Elect* and *Bound* their *Kings* and *Generals*, *Reges ex Nobilitate, Duces ex Virtute ſumunt*; and of their King he ſaith, the Power was ſo bounded, that he could not call it *Free*, *Nec infinita, aut libera Poteſtas*, and that *in Conciliis*, Their *King's Authority* was *in perſwaſion* rather than *Command*, *Suadendi potiùs quam jubendi poteſtate*.

Ceſar ſeemeth to conceive they had no *King*

or

or fixed Common Governour in time of Peace: but for *War*, ſaith he, they *Chooſe* out *Generals*, *qui Bello præſint ut vitæ neciſque habeant Poteſtatem.*

In our Britiſh Anceſtors he found a King, but by *Election* of a great *Common-Council*, by whoſe conſent he obſerveth that *Caſſivelane* was *choſen King* and *General* againſt his Landing; *Summa Imperii Bellique adminiſtrandi, communi Concilio permiſſa eſt Caſſivellauno*; and again, *Noſtro adventu permoti Britanni, hunc toti bello imperioque præfecerant.*

That the *Brittans* agreed much with the *Gauls* in their Cuſtoms, I do not deny; but I know not why this ſhould make the *Gauls* to be the *Elder* Brothers, as ſome teach us, becauſe our *Britain* is an *Iſland*: Yet it may be much diſputed, if not proved, that it once was joyned to *Gaul*, (or *France*) in one Continent, for which we might produce ſome of the old *Poets*, and others before *Twine* and *Verſtegan.*

However, it is clear enough from *Cæſar* and *Pliny*, that the *Gauls* were much moulded by the *Britiſh Druids*, although they ſeemed more Polite in *Juvenal's* time; and afterwards being more *Frank*, they afforded a *Chriſtian* Queen to *Ethelbert*, and the Model of a great School to

Sigesbert; which yet must not wrong *Alcuinus*, who from hence moulded the University of *Paris*, if we may Believe all that write of *Charlemaign*.

And if we add *Strabo* to those cited before, we shall find they *Chose* both *Generals* and all great Magistrates.

When they had a King, the Crown passed by Election, and was so limited, that *Ambiotrix* (one of their Kings) acknowledged, *Ut non minus in se Juris Multitudo, quàm ipse in Multitudinem*; So in *Cæsar*.

Their *Common-Council* much consisted of *Equites* (and such perhaps our *Knights* of Shires; *Electi de plebe*,) and *Druydes*, their *Clergy*) who did over-rule them all, by their *Bans*, and Sacred *Oak Misleto*, as if it had grown in *Dodona's* Grove.

Their grand Corporation was dissolved by *Roman* Edicts, in *Gaul* by *Claudius*, (as *Seneca*, *Suetonius*;) but in *Rome* by *Tiberius*, (if not *Augustus*) in *Pliny*; but *Vopiscus* keepeth a *Druydess* to presage the Empire to *Diocletian*, when he had killed the Boar; and *Ammianus* may afford them in *Rome*, in *Julian* or *Constantius*.

But

But in *Scotland* or *Ireland* they remained longer, if we may believe their Annals of *Columbanus*, and of *William* the Iriſh Abbot: But in *Dioclesian*'s time, *Amphibalus* the famous Brittan, fled from *Rome* to his Friend St. *Alban*, (who dyed for him in his Cloaths, it is ſaid; but we find him Condemned by Law, and ſtyled Lord of *Verulam*, *Prince of Knights*, and *Steward of Brittain*, in his Shrine, and *Jacob de Voragine*.) Ere long we find him made a Biſhop in the *Holy Iſle*, and there he did Succeed the Brittiſh *Druyds*, and his Scholars were enow with their Blood and Carkaſſes to make the name of *Litchfield*.

But the turning of *Druyds* into our Biſhops, (in *Lucius*'s time,) is no more certain, I think, than that thoſe were the *Flamins* or *Arch Flamins*, of whom we hear ſo much of late; but of old few or none relate it, but only *Monmouth*.

The Name of *Flamin* came to *Brittain* from the *Grecians* or the *Romans*, (who had *Druyds* from the *Brittans*,) where they were moſt Sacred *Prieſts*; at firſt but three, but when every God and Godded Man or *Dæmon* had his *Flamin*, they became extreamly innumerable.

Yet the firſt three ſtill kept their Diſtance,

Place and Seniority, from whence the Phraſe of *Arch-Flamin*, which yet I dare not aſſert to have been in *Brittain*, or to be ſo much as known in the time of *Lucius*; or the name of *Arch-biſhop*. But of this Sir *Henry Spelman*, of *Lucius's* Epiſtles in *Gratian*, and Mr. *Patrick Young* on *Clements* Epiſtle to the *Corinthians*.

But *Feneſtella* with his Names of *Biſhop*, *Arch-Biſhop*, *Cardinal*, *Patriarch*, *Metropolitan*, &c. is now come out with another Title of a later Age, than he that lived in *Tiberius*.

But to return to our *Britiſh Druyds* mould-ing the State, and yet they would not ſpeak of State but in or by a *Common-Council*, (as was touched before in the *Militia*,) and among theſe the ſame *Cæſar* will tell us, that there was a chief or *Preſident*, but choſen by Deſerts, and not by a blind way of *Succeſſion*; *Si ſint Pares plures ſuffragio adlegitur; nonnunquam etiam armis de principatu contendunt.*

Nor is it probable the *Brittans* ſhould be great Patrons of *Monarchical Succeſſion*, which could hardly well conſiſt with their *Gavelkind*, which is not only in *Kent*, but in divers other Places of *England* and in *Wales*; from the *Brittans*, as we may learn from Parliament, in

27 *Hen.*

27 *Hen.* 8. and in K. *Edwards* Statute of *Wales*, with *Littletons* Parceners: And his Commentator makes it one mark of the ancient *Brittans*, and from them alſo to *Ireland*: and from the Brittiſh *Gavelkind*, do all the Children yet among us part their Fathers *Arms*, of which alſo the great Judge on *Littletons Villenage*.

But on the *Parceners*, he deriveth the *Crowns* deſcent to the *Eldeſt*, from the *Trojans* to the *Brittans*, ſo indeed do many others with *Monmouth* and *Baſingſtock*.

Yet our Beſt *Herald* the Learned *Cambden*, will deride the Story of the *Trojans* coming hither, but his many Arguments to prove the firſt Inhabitants to be a Kin to the *Gauls*, do no more convince me that the *Trojans* might not come hither afterwards, than that the *Normans* did not come, becauſe the *Saxons* were before them.

I repeat nothing from *Gyraldus Cambrenſis*, *Matthew Paris*, *Hoveden*, *Huntingdon*, or others, who derided *Monmouth*, till they were convinced by ſome *Brittiſh* Writers which themſelves found; beſides all the *Greek* and *Latin* Authors cited by *Virunnius*, *Leland*, Sir *John Price*, and divers others, that I ſay nothing of the *Scottiſh Chronicles*,

Chronicles, or of the Learned man that ſhewed King *Henry* the firſt the Deſcent of divers Nations of *Europe* from the *Trojans*, in *Huntingdon* and *Hoveden*.

But it may be conſidered what this State and Parliament hath oft owned of *Brute*, and the *Trojan* Story, not only in the grand Moot of the Dependance of *Scotland* on *England*, ever ſince King *Brute*; which, beſide all Records in the Exchequer, is at large in *Walſinghams Edward* the firſt, and the *Survey* of *Normandy*, as alſo in the Laws of the *Confeſſor*, cap. 35.

To which I might add the *Trojan* Reliques, Statues, Tablets and Pictures, in all the Britiſh, Daniſh, Saxon, Engliſh Wars, found here in *Cornwall*, *Wales*, and other Parts, beſides our *Troy Novant*, or *new Troy*, the old *Trojan Roman* name of this Famous City of the *Troinovantes*, (in the Roman Writers *Trinobantes*) now *London*, ſince the time of *Lud's* building a Gate, and changing this Cities Name.

But for leaving out the Name of *Troy*, ſome were ſo much offended, that it came to a great Conteſt and Quarrel, couched in Verſe (from others) by the old *Gildas*, and tranſlated by the Famous *Nennius* of *Bangor*, eſcaping that bloody Maſſacre.

Who

Who hath alſo left us an old Hiſtory, (yet to be ſeen in MS.) collected, as himſelf ſaith, from the *Britiſh* and *Scottiſh* Records, and from the old *Roman* Annals, (which were then found) relating the Pedigree of *Brute* or *Britto*, (ſome will have him *Brotos*, and ſome *Brutus*,) from *Æneas* to *Rome*, and his bringing ſome *Trojan* Reliques hither by the way of *Gaul*, where (he alſo ſaith) he built the City of *Turons* or *Tours*, much as *Monmouth* and others have the Story, though I could never find it in *Homer* or any of the Ancients, by them cited for *Turons*.

Yet I find the ſame *Nennius* confeſſing that the *Britiſh* Annals had another deſcent of their *Brute* or *Britto*, from *Japhet* (obtaining *Europe* for his Portion with the Britiſh Iſles, of which *Noahs* Will in *Euſebius*, or other old Fragments;) came *alone*, from whence the *Almans* and *Francks*, beſides our *Britto*, (Father to the *Brittains*,) whoſe Genealogy through twenty Deſcents to *Noah* and *Adam* he ſaith he had from the Tradition of thoſe who lived here *in Primis Britanniæ Temporibus*.

So that if we may not believe *Talieſſin*, (the Britiſh Bard) of *Trojans* coming hither with their *Brute*, yet we may peruſe his Scholar, or the *Merlin* that

that foretold the Name of *Brute* ſhould come again upon this *Iſland*; whether in the *Scottiſh* Union, or in the *Welſh* returning to their Loſt Dominions, I diſpute not; nor how this Iſland came ſo like to *Somothrace*, (ſo near a Kin to *Troy*) in Rites of Worſhip, or in other Cuſtoms, as of old ſome did obſerve, eſpecially in thoſe concerning *Ceres* or *Proſerpina*, ſo famous here, that in the old *Argonauts* the *Brittiſh* Iſles are ſtiled the *Court* or *Palace* of *Ceres*; and yet this might be for other Reaſons.

But although I cannot deny ſome *Trojan* cuſtoms among us, yet I know not why I ſhould grant that *Trojan Succeſſion* to the Crown, which ſo many do aſſert, when as themſelves do yield the ſame *Trojans* to be *Brittans*, and thoſe *Brittans* of whom we ſpake before.

And beſides the Brittiſh *Gavelkinde*, and all before, themſelves do alſo relate their own *Brute*, parting his Kingdom among his three Sons, and again the Crown parted between the two Sons of *Madan*, two of *Gorbodio*, two of *Molmutius*, two of *Lud*, ſo near a Kin to him that *Ceſar* found *Elected* King by *Common-Council*.

And I muſt believe thoſe who aſſert the *Trojan* Crown to go by *Succeſſion*: yet I know not why

why I may not also believe so many good, or better Writers of the *Trojan Common Council* or *Parliament*, and their Power in Peace and War, with all things else that might concern the King or Kingdom; which great Council did consist of *Princes* or *Nobles*, and *Elders* of the People.

Of which *Trojan Parliament* we read in *Apuleius*, *Socrates*, *Daemon*, and in *Homer*, *Virgil*, *Dictys*, and most ancient *Dares*, who lived also in our *Britain*, (if good *Bale* deceive us not,) which yet is not so certain as that he was Translated or Paraphrased in Latin Verse, by *Joseph* of *Exon*, or *Iscan* our Countrey-Man, as many of his Verses speak, although that Elegant Poem be ascribed to *Cornelius Nepos*, as by him Dedicated to *Salust*, in the times of the great Commerce between *Rome* and *Britain*, which produced so many famous *Brittish Romans*, beside *Constantine*, *Helen*, and the modest *Claudia*, of whom St. *Paul* speaketh, and *Martial* (in several places) maketh her a *British* Woman.

I will not insist upon their *Election* of Emperors or *Generals* by a kind of Lot in *Dictys*, nor will I deny but the *Trojans* were severe enough to all *Traitors*, whose dead Bodies also were denyed *Burial*, if we may believe all from the

Iliads; but the *Odysses* may also afford us the very same Punishment for *Tyrants*, whom they hated as much as the *Grecians*.

Nor will the Patrons of *Succession* or *Prerogative* find more encouragement among the *Grecians* than among the *Trojans*, though I cannot deny but they do rightly observe many *Grecian* Customs among the *Britains*; nor will I deny to our Ancestors, both *Greek Philosophers* and *Greek Schools*, besides *Bladud*'s at *Stamford* and other Places.

I could easily believe these Islands to be known to the *Grecians* long before the *Romans*, of whom *Lucretius* is the first (that I yet know) speaking of *Britain*, but it was described by *Polibius*, (though our great Herald seem to forget it,) who might learn it from the *Carthaginians* trading hither, and by *Eratosthenes*, *Dicearchus*, *Pitheas*, and *Artemidorus*, if I be not deceived from *Strabo*, that I say nothing of the old *Argonauts* (ascribed to *Orpheus*,) naming *Ireland* and describing *Britain*, or of the Book of the *World*, (in *Aristotles* Works) where *Albion* and *Ierne* are *Britisb* Isles, mentioned also in *Dyonisius*; and very famous for their *Mines* of *Tin* or *Lead*, whence the name of *Cassiterides*,

of

of which *Herodotus*, and others of the Ancients.

What was the *Grecian Genius* towards their Kings, doth not only appear in their supercilious *Ephori*, Eye-brows, or the *Left* eye of *Greece*, but in the *Right* Eye, or *Athens*, of which much might be spoken from all the Greek Historians, besides their Laws or Politicks of *Plato* and his Scholars, long before the *Attick Laws* Collected by *Petitus*, that I say nothing of *Aristophanes* or any of their Poets.

But how much our Ancestors owed to the *Grecians*, I do not find expressed by any; most of our *Plays*, much of our *Works*, and somewhat of our *Laws* seemeth to be *Grecian*.

The *Genius* of a State is seen in *Plays*, some think, rather than in *Works*; they are *Passions* and as Lovers *Passion*, which do shew the *Soul* much quicker than do *Words* or *Actions*; and the Greek *Scenes* were *Passions* (or sufferings) of *Princes* rather than their *Actions*; and a Tyrants blood was thought the Richest and fairest *Sacrifice* to please the People and appease their Gods; but *Interludes* must be Corrected much, and then they may both Moralize and Methodize the best Historians, and may be Divertisements

of Use as much as Pleasure to a *State*, which else was apt to grow *Morose* or *Melancholick*, if it were too *Sedentary*.

The *Grecian Cards* or *Chess* (at the Siege of *Troy*,) may shew their Shuffling, *Cutting* and *Triumphing* over *Kings*, and *Checking* them by small *Pawns*, and in the last *Scheck-mate* doth signifie the *King is Dead*, or the *Kings Death*.

But when shall we come again to the *Mathematical* (or *Philosophers*) *Game*, which was also used here, though now we have lost old *Plato's Analyticks*, of which his *Theon* long before *Vieta*? when shall our *Kittel-Pins* return again into the *Grecian Skytals* of the *Muses*, whence they might degenerate?

When shall our *Cards* return again to *Charts*, and teach our Children *Prospects* and *Geography*, with the true *Site* of Countreys, Cities, Persons, and the famous men of old, who conquered (in their *Plays*,) by Laws of *History* and exact *Chronology*, and not by Fancy only as of late.

When shall our *Grecian* Dice be taught to teach our Children *Squares* and *Cubes*, with all the Mathematicks, as they might much better and easier than our Papers and our Tedious Figures; for I need not say how much the six sides of a *Dye* would help

help for the Root of all perfect *Cubes*, and half six for all *Surds* in that and higher *Powers*; beside so many other uses of the *Dye* in all *Mathematicks* and *Architecture*.

In which also we owe to the *Grecians* for our *Attick* and *Ionick*, and our other *Moods*; and so in *Musick* also, that I speak not of *Perspective* and almost all the *Mechanicks* of *Wheels*, *Beams* and *Leavers*, with perpetua or continual Screws; or of the *Physick* and *Apothecary* Terms, more *Grecian* than *Italian*.

And beside, divers of our *Law-Terms*, *Endite*, *Ideot*, *Chyrographer*, *Protonotar*, &c. I could almost believe the *Grecians* were the Patrons of our *Tryal* by Twelve, which was not first brought in by the *Normans* or by the *Saxons*, although we found it with them in *Ethelred*, or *Edward* the *Senior*, and before them in *Alfred*, as appeareth by the Causes why he hanged so many Judges in the *Mirror*.

From the twelve signs of the *Zodiack*, it might come to the *Chaldeans*, thence (or from the *Jews*) to the *Egyptians*; for in *Egypt* was the old *Jury* of Twelve Gods, so often in *Homer*, *Herodotus*, *Diodorus*; and from *Egypt* to *Greece*, with the Twelve Labours of *Hercules*, *Egyptian* or Oriental.

ental *Hircol*, *Hirtor*, *Hirsut*, and thence the Fable of his *Lyons Skin*.

But in *Greece* this Number was both Famous and *Sacred*, as in our *Juries*: and of this, *Plato* in *Timæus*, and in *Phædrus*, in his *Laws*, and in *Phædo* and *Critias*, which would almost perswade me that he had seen *Moses* or the *Flood*, or the Twelve old *Heroes*, or had read in *Moses Song* of the Earth being parted, according to the *Number of the Sons of Israel*, or (as some would have it) of the *Angels* or the *Sons of God*.

And for the *Grecian* Trials by Twelve, I need cite no more than the known Histories of *Orestes*, and of *Mars*, tryed for *Murther* by a *Jury* of Twelve, (and quitted only by the Equality of Votes,) in that Famous Place which from him was called *Areopagus* or *Mars Hill*, of which St. *Paul* (and *Dyonisius*) and the *Altar to the strange God* is described in *Pausanias*, to be compared with *Laertius Epimenides*; (and divers others) that I say nothing of the Σεμναι θεαι, which from *Areopagus* might come hither with the Tryal by Twelve, and be Mothers to the Name rather than Person of the famous British *Samothes*, as *Areopagus* seemeth to have been to much if not to most of our Law Pleadings and Customs in Criminals.

Yet

Yet it may be poſſible that this Number might be as Sacred among the *Trojans*, although I remember little of it till *Æneas*'s coming into *Italy*; and then we hear of twelve *Procers*, twelve *Vultures*, twelve *Lictors*, twelve *Hours*, and at length twelve *Months*, and other things, for which *Dionyſius*, the *Saturnals*, the *Genials*, and *Traquel*, may be conſidered, with that of old *Ethelward*, in *Edgar*, *Argivæ Hebdomadas gentis poſuere Magiſtri, ſeptimanas quas voce Latina.*

But the *Romans* alſo had many, if not all their *Dozens* from the *Grecians*, which were known here long before *Ethelbert* did ſettle his *Dooms Romano more*; and we often find the number of Twelve in the old Hiſtories of *Britain* and *Gaul*, for their Twelve *Peers* are much older than ſome may think, that will have them onely to be *French*.

Nor would it be impoſſible, I do think, to ſhew ſome other of our Law Cuſtoms borrowed from the *Grecians*; yet I do not know that our old *Greek Lade*, was ſo called from Greek Law, (as divers would perſwade us) or from *Greek Leod*, or from *Greek Language*, which yet appeareth in the *Welſh*; but I know not that it was ſpoken *here* or in *Gaul*, but

near

near *Marseils*, a *Greek Colony*, not much younger than the elder *Cyrus*.

But it may be that the *Druyds* had their Learning and their Letters (though in *Sacris* they did write but little) from the *Grecians*, or *Phenicians* rather, who in this did reach the *Grecians*, as both *Dictys* and the Crowd of *Cadmus*.

I could also believe their *Characters* to be very like those of *Canaan*, (as *Scaliger* on *Eusebius*, and others,) but I cannot yield them to be *Hebrew*, though so many Learned men affirm it: but for this see *Fullers Miscellanies*, and *Buxtorfs Dissertations*, with the *Punick* Columns of *Joshuah* and *Adoranis* Tomb in *Spain*, *Villalpand*, *Cruesius*, old Hebrew in *Larius*, Mr. *Selden de Dis Syris*, and *de Jure Gentium*, that I say nothing of *Tuscans Antiquities*.

Yet, if any thing, I could wish the *Samaritan Pentateuch*, where the true Ancient *Hebrew*, (as so many, before *Marmus*,) it should be in *Terahs* Age, at his Death, which would more settle *Chronology*, than else I find it possible, he being there sixty Years younger when he Dyed than our Bibles make him; so that *Abraham* might be born at his Seventy, in which the *Jesuit* also agreeth unto *Scaliger*.

I can

I cannot believe the Story of *Ulysses* Navigation hither, or that *Hannibal* did Conquer *Britain*, although it be recorded in a *Jewish* Writer of as much note as *Gorionides*; but the mistake is of *Bretany*, for the *Brettian*, *Brutian* or *Brescian* Tract in *Italy*; and such a slip is also found in some Copies of *Polibius Atheneus*, and the Fragments of *Olympiodorus*.

But of *Phenician* Traffick hereabout, there are many Proofs and Reliques, beside the Famous Story of the *Punick* Pilot, who was commended and Rewarded by the State of *Carthage*, for sinking his Ship and Fraught rather than he would be forced by the *Romans* to discover the *Punick* Traffick for *Lead* or *Tin*, found about the *British* Islands, therefore called *Cassieterides*.

Of which so many Greek Authors before *Strabo* or *Pliny*, who relate the *Carthaginian* and *Marsilian* Traffick for those Oars. And *Matthew Paris* telleth us, that 1241. there was no *Tin* (that he had heard) in all the World, but in *Cornwall* only: And then it came to be found in some parts of *Almain*.

The Learned Author of the late *Peleg* (among divers other Brittish words) hath found a new Etymology for the Name of *Britain*;

which (notwithſtanding *Brith*, for Colour or Painting, and *Bretas*, in ſome Greek Poets, for a *Picture* or a *Painted Brat*) he would have to be called by the *Phœnicians*, *Berat Anac*, or the *Field of Tin and Lead*.

To which I may add the Northern Sea, called of old the *Phronean* Ocean, or the Sea of *Saturn*, whom they feigned to lye aſleep in the Bottom of that Sea, bound by *Jupiter* in a *Golden Pumice*, of which *Plutarch*, *Euſebius*, *Ptolomy*, and divers others; and of this, the Author of the *Veyl*, or *Maſk of Heaven*.

Of which I muſt ſpeak but little, only this for a *Clavis*: The *Scene* is the little World, or Iſle of *Brittain*; *Tbule*, ſome appendant to that Crown, or *Scotland*, whoſe troubles of 1639. are ſhadowed in the night work, called *Scotos*, (or Darkneſs) *Saturn*, the *Scottiſh* Genius, and *Mercury* the Clergy, but in ſpecial the late *Arch-Biſhop* of *Canterbury*; *Jupiter* (the Son of *Saturn*) or a great *Scottiſh* Lord, lately on the *Scene*, that was firſt ſent to reconcile *Saturn*, but he turned *Retrograde*. *Mars* the *Genius of War*, and in ſpecial, the great *General* againſt *Saturn*, or the Lord Lieutenant of *Ireland*: *Venus* ſeemeth to be *Queen Mother* of *France*, then alive in *England*:

Phœbus

Phœbus and *Phœbe*, need no gloſs. *Imperii fata*, plain enough to thoſe that know that Dialect.

But *Phœbe* might have there ſeen (before this Parliament,) that *Peace* had been her *Work*, and ſhould have been her *Happineſs*: nor is it yet too late, or wholly paſt. *Habent etiam ſua fata Reginæ*; and there is a ſilent Patience which may Conquer more than all the World can get by *Force*.

Who will unmask the *Chymical Part*? which the Poets alſo Veiled in their Fables of *Saturn*, bound by *Jupiter* in *Golden Pumice*; and it may be poſſible that future Ages may be brought to ſee or know the Treaſures in our *Chronian* Ocean, and the meaning of that Riddle. In the mean time, he that can improve the *Sympathy* of *Mars* and *Venus*, or remove the *Antipathy* of *Saturn* and *Mercury*, or can bind *Saturn* by *Jupiter*, and by the Mediation of *Phœbe*, can reconcile all to *Phœbus*, or can live on *Herbs*, may have little need I hope to flatter any.

But to return to our *Britiſh Anceſtors*. How *Cordiel* and *Guintoline* were Created *populi Juſſu*, *Archigal*, *Enniaus* or others Depoſed, is obſerved by divers: I ſhall only add, that *Proceres*

and *Magnates* here are rendred *Eſtates*, *People* or Commons in *Grafton* and *Chaucer*, or the old *Fructus*, by *Julian* of St. *Albans*.

Molmutius firſt did wear a *Crown of Gold* (they ſay:) he did deſerve it, for to him we owe divers of our *Common Law* Principles; nay, and that, for more than is found in *Monmouth*, as I touched before.

And upon him the Patrons of *Succeſſion* build a fixed *Monarchy*, which was not ſuch it ſeems before; nor ſince, if we may believe thoſe we can hardly diſprove, that from this time begin the petty Princes, *& plurimis Regulis ſupremam Mandandi & Judicandi Authoritatem.*

And themſelves divide the Crown between his two Sons, *Brennus* the *Britiſh Thunderbolt* to *Rome*, (and ſome do carry him as *Lightning* to *Delphos*,) while his Brother *Belin* did return and dye in peace, and firſt of *Britiſh* Kings was burnt to *Aſhes*, yet he lived here in *Billings-gate* and *Key*, beſides his famous *Ways* or *Streets*, his own and Fathers *Laws*, (which with the *Mertian* came to us through *Alfred*.) But we need not go to his Daughter *Cambra* for the firſt Affinity between the *Brittans* and *Sicambrian Francks*, or *Gauliſh Germans*.

Come

Come we now to *Cesar's* time, *Lud* is alive in *Ludgate*, *London*, (as before,) he did amend the Laws, but by a *Common-Council*: And such Council did reject his Sons, and Chose *Cassivelane* (as *Cæsar* doth agree with *British* Authors.) He did summon one (that slew his Kinsman) to appear and submit himself to Judgment, *Sententiam quam proceres Dictarent subire.*

But the famous *Androgeus* protected him in *London* (being then the Governour,) pleading the Custom and priviledge of that City, which had also then a Court to hear and determine, all the Pleas of Citizens, or *Quicquid aliquis in Homine suos clamaret*, and that also by Ancient Prescription, *ex Veterum traditione.*

Which from *Monmouth*, *Virruvius Ponticus*, and others may be compared with the Laws of the *Confessor*, for *Troinovant* or *London*, and its weekly *Hustings*, and *Ardua Compota*, and *Ambigua placita Coronæ*, and for the *Courts of the whole Kingdom* there, whence it is called *Caput Regni & Legum.*

Which may also be compared with that of the *Mirror*, for Parliaments to be in *London* by ancient Laws, which is here expressed, *Juxta* vete-

veteres Conſuetudines bonorum Patrum & Predeceſſorum, & omnium Principum & Procerum, & Sapientum ſeniorum Regni, very full and clear, Parliaments of all Eſtates.

That which is added of thoſe *Courts*, to ſit and hold wherever the King was, is *Britiſh* alſo as well as *Saxon*. So the Laws of *Howel, Dha*, the *Good*, (in the Chronicles of *Wales*, but larger in Sir *Henry Spelman*,) *Ubicunque Sacerdos, & Deſtein, & Judex, ibi Dignitas Curiæ & Aula Regia, licet Rex abſens ſit*: and this is one Reaſon why the King was never *Nonſuit*; becauſe he was ſuppoſed *preſent* in all *Courts*: and yet his Atturneys *Ulterius non vult*, had the effect of a *Nonſuit*.

But for *London* and its Antiquity before *Rome*, *Stephanides* (a Monk as old as K. *Henry* the firſt, now in Print,) may be compared with *Tacitus*, *Ammianus Marcellinus*, nay, with *Cæſar* alſo for the *Trinobantes*, although ſome think he never ſaw this City. But the Charters of K. *William* and *Hen.* the firſt are in Print; ſo alſo of *Richard* the firſt, and K. *John*, in *Hoveden* and others, which yet muſt not perſwade us that *Sheriffs* were then firſt Created here.

For *Counts* or *Viſcounts* are as old as *Counties*: and

and the *Britiſh* Authors ſpeak of Dukes of *Troynovant*, (ſuch was *Androgeus*,) and *pro Conſulibus vice-comites*, in *Fitz-Stephen*, and *Willielm. de Einford vice-comes de London*, & *Joannes Subvicecomes*, in the Book of *Ramſey*, *Wallbrook Caſe* in *Hen.* the firſt; that I may ſay nothing of *William* the *Chamberlain de Londonia*, of whom before in *Hen.* 1. which may be premiſed to the Famous *Quo Warranto*, brought in *Edward* the Second.

But to return to our *Britiſh* Kings, I cannot deny but ſome Authors do Record the Crown (as by Act of Parliament,) ſettled on the Heirs of *Caſſivelane*; but themſelves alſo can ſhew us the very next King brought in by *Election*, (not from *Caſſivelane*,) and that both of *Lords* and *Commons* too, if we may believe *Chaucer*, or the old *Fructus Temporum*.

This *Theomantius* (many of their names are Greek,) was Duke of *Cornwall*, when he was *Elected* King; He doth yet live in a Famous Son, great *Arviragus*, (whom the Roman Poet, and ſo many others praiſe,) he did amend the Laws, but by conſent of Parliament; for all agree that a *Senate* was *Elected* (or *Dilected* as they ſpeak,) in his time; not then firſt Created,

Created, but it might be renewed after the *Romans* had ſo much interrupted it, of which before from *Tacitus*; ſo far am I ſtill from believing our firſt Parliament did come from the *Roman Senate*.

It is a known Hiſtory, how that King Divorcing himſelf from his *Scottiſh* Queen, and Marrying a Daughter of *Claudius Cæſar*, (at *Claudio Ceſtre*,) was cenſured by his Parliament or *Proceres*, ſo that he was fain to exhibit his Anſwer in Writing, which is ſtill left us in Fragments in divers places.

Amongſt other paſſages, he ſaid, he knew not but it might be lawful for him to have more Wives than one; *Eo quod Leges Britannorum, illuc uſque id nunquam prohibuiſſent*, becauſe the *Britiſh Laws* had not yet forbidden it.

I muſt not here diſpute what moved *Lucius* to deſire and ſend for the *Roman Laws*, nay, and that for the *State* alſo. Nor can I yet Subſcribe to them that think the *Britains* to be wholly Governed by *Roman* Laws, from *Claudius* to *Attila*'s time.

But could the *Britiſh* King ſend out for *Foreign* Laws, or call them in without conſent of Parliament? it might not be, and *Eleutherius*'s

Anſwer

Anſwer is in Print, (among the *Confeſſors* Laws and every where,) *ad Petitionem Regis & procerum Regni Britanniæ. Petiſtis à nobis Leges Romanes & Cæſaris*; his anſwer was, You have the Scriptures, and from them you ſhall do well to frame your Laws, but by your Parliament, *per Conſilium Regni veſtri.*

They which begin our *Britiſh Chriſtianity* from *Eleutherius*, ſeem not to conſider his Epiſtle, granting that the *Britans* were already Chriſtians, and had both the Old and New Teſtament: *Suſceptis nuper Miſ. D. in Regno Britanniæ, Legem & Fidem Chriſti, habetis penes vos in Regno utramque Paginam*, &c. They were *Chriſtians* long before.

Tempore ſummo Tiberii Cæſaris, as *Gildas Badonicus*; and *Albanius* telleth how *Philip* the Apoſtle ſent hither *Joſeph* of *Arimathea* out of *Gaul*, ſee *Baronius*, E MS. *Hiſtoria in Vaticano*, & *Melchin*, cited by *Bale*, *Capgrave* of *Arviragus*, and *Malmſbury* of the Famous *Glaſſenbury*, which in old Charter by Parliament is ſaid to be *Founded by the Lords Diſciples*, and is therefore Styled, *Fons & Origo Religionis*; as *Weſtſex* is *Caput Regni & Legum*, in the Laws of *Henry* the firſt, as *London* in St. *Edwards*.

Some have alſo brought St. *Paul* in *Britain*; ſo *Venantius Fortunatus* (Anno 570.) from *Theodoret* perhaps, who yet nameth not St. *Paul*, but the *Leather Cutter*, and the *Publicans* and *Fiſhermen*, which may be St. *Peter*, if we may believe the Greek Author cited by Mr. *Patrick Young* on *Clemens*, or *Sophronius* and *Nicephorus*, as *Dorotheus Tyrius* of *Zelotes*: That I ſay nothing of the Britiſh *Bard*, who from the Stars did tell the Birth of our Saviour, in ſo many older than *Bale*.

But again to the *Brittiſh* Parliaments, for ſo we read in the Laws of King *Alfred*, (out of *Britiſh*, *Trojan*, *Grecian*, &c.) that in the very firſt times of Chriſtian Religion in this Iſland, Laws were made by a Common-Council of Biſhops and other Wiſe Men; with that of *Bede*, *Servabant Reges ſacerdotes privati, & Optimates ſuum quique Ordinem.*

After the Death of *Lucius*, the *Britains* could not ſoon agree about the Choice of another King; ('tis every where,) 'ere long they choſe *Aſclepiodat* the Duke of *Cornwall*, by conſent of *Commons* alſo; *Communi aſſenſu & annuente Populo*: Troubleſome he was to all the *Romans*, but eſpecially to *Gallus*, who hath left his Name

in

in *Walbrook*, as the *Gauls* (ſome think) in *Wales*; but for this *Polydor Virgil*, and the *Confeſſors* Acts, with the Laws of King *Ina*, may be compared with *Monmouth*, *Virunnius*, *Baſingſtoke*, *Florilegus*, *Gyraldus*, and ſome paſſages of *Bede*.

Coel e're long appeareth on the Scene, but yet againſt *Succeſſion*; and he cannot dye ſo long as *Helen* liveth, Mother to the Chriſtian Emperor, but Daughter to our *Britiſh Coel*, who was alſo Father unto *Colcheſter*.

We are come to times of more certainty, when that deadly wound (of one of the *Heads*) had made the *Roman Empire* gaſp, as if it would Expire and breathe no more; it had little liſt or leiſure to command or Counſel any of the *Toes*, or other Members at a Diſtance.

In this point of time the *Britains* Roſe (with other Nations) and did ſoon recover moſt of that the *Romans* held by force; their Laws and Cuſtoms now were free, 'tis yielded us by all: but they could hardly turn and view their Liberty, before they came to be new Slaves to the *Picts* and *Scots*, ancient Appendants to the *Britiſh* Crown in Fee.

The Roman *Conſul* then in *Gaul*, could not regard the Britiſh Sighs and Tears, which himſelf

knew to be as juſt as pitiful; for had the *Romans* not ſo gleaned *Britain* of its Glory, (for their Conqueſt of other Nations,) they had never asked help it ſeems againſt the *Scots*.

From the *Romans* they had firſt recourſe to their Neighbour *Gauls*, or to their Countrey-men in *Gaul*, for ſuch they were in that which to this day is called *Brittany*.

Upon what terms they had help from them I diſpute not; their King had as great a Name as the great *Conſtantine*, but how himſelf or his Sons like the *Britiſh* Reins, we may gueſs in part from what we read in *Gildas Tears* for his poor Countrey; where he complaineth that Kings were Elected and Anointed for nothing of God or of Good in them, but only for their Force, *&c.*

This is alſo found in another Author (beſides *Gildas*) as old as King *Stephen* or *Henry* the Second, which may the more perſwade us that *Monmouth* had good Authority for what he Writes of thoſe times, for he alſo hath *Gildas*'s words, with very little variation.

By which we ſee the Law, or at leaſt the Cuſtom of thoſe times, both for *Electing*, *Anointing* Kings among our *Britiſh* Anceſtors.

Two

Two of those Kings may be *Constantine* and *Constans*, who are said to be Slain by some of their Guard or Attendants, yet so as divers intimate it came from a farther and an higher Hand.

Constans also came up to the Crown by a Faction rather than a free Choice, as all relate; who ascribe it to the Duke of *Cornwall*, not without great Contests of divers Lords, and with little consent of Commons, *vix Annuente Populo*, as we may read in divers Authors, who are also plain enough to make us know, that he was pulled down by the same Hands that set him up.

Vortiger came next, but on *Election*, it is agreed by all; and that there were two Royal Princes (Sons to the late, and Brothers to the last King,) who must wait for the Crown with much Patience.

How he called in the *Saxons* by consent of *Parliament*, I shewed before in the *Militia*, and I might confirm it from divers others; who do also Record, that the King told the *Saxons* that he durst not without the Consent of his *Proceres*, assign them any Land, or City, or Castle; for that it was *against the Laws of his Kingdom, &*

prohi-

prohibitus ſum, quod Proceres Regni diſſuaderent, &c.

Yet it may ſeem the Lords agreed to their ſetling in *Thanet* afterwards, but the Commons Diſſented ſo, that they reſolved to drive them out again, and that in Common-Council or Parliament: *Concilium fecerunt cum Majoribus ſuis, ut pacem diſrumperent; & dixerunt, Recedite à nobis*, &c. My Author is old *Nennius* of *Bangor*.

He hath clear paſſages for Parliaments in that time, and for their Power alſo: As for *Inceſt* with his own Daughter, *Vortiger* was firſt Corrected, (perhaps with the *Jewiſh* Diſcipline, which was here alſo till the time of *Henry* the Second) and St. *Germane* the Arch-Prelate, came with the whole Convocation-Houſe (*Cum omni Clero Britanniæ*) *Corripere Eum*.

Nennius ſaith, that in a great Moot of Clergy and Laity, he was ſo roughly handled, that he roſe up in a great Rage and Fled, or at leaſt ſought how to Flye, but he was Banned; *Maledictus eſt, & damnatus a beato Germano*.

Afterwards *Vortimer* was choſen King, ('tis every where) but after divers Victories he Dyed, Poyſoned (as ſome thought) by *Vortiger*.

He now Combineth with the *Saxons*, and by their Power entreth the Scene again, but with

with little Conſent of the *Britains*; and although he Acted a while, yet he was Hiſſed off, being odious to all, till at length his Heart brake. *Nennius* addeth, that ſome ſaid the Earth opened for him; and St. *Germane* Writeth, that his whole Family was Burnt from Heaven, which was much aſcribed to the Clergies Curſe or *Excommunication.*

Which was in uſe among the *Britains*, and that alſo upon their Princes, of which we have many examples; as of *Teuder*, and *Clotri*, for Homicide and Perjury, and *Hovel*, *Gleviſſicg*, and *Brochwell* did hardly eſcape by a great Fine *& Judicium Suffere non potuit*, of which Sir *Henry Spelman* in his *Synods* of *Landaf.*

It was then by much more heavy than of late: *Cæſar* obſerveth it among the *Druids*, and in him it is *Pœna Graviſſima*; adding alſo, that ſuch Perſons were Abhorred by all as ſome Loathſome Diſeaſe, and that they might have no Honour or Right of Law, *Neque iis petentibus Jus redditur.*

And among St. *Patricks* Canons we find the *Excommunicate* excluded, *à Communione, & Menſa, & Miſſa, & Pace*; their Ceremonies in this ſeem a-kin to the *Jewiſh Cherem*, nay, to their *Shammatha*

matha, (or St. *Pauls Maranatha*,) and it ſo continued among the *Saxons* alſo, as we may ſee in the Laws of *Canute*, making it Capital to protect or harbour any ſuch: But in the *Confeſſors* Acts, when an *Excommunicate* fled to the Biſhop for Abſolution, *Eundo & redeundo Pacem habeat*; elſe it ſeems they were as *Out-Laws*, who might then be Killed by any that met them, as the ſame Laws of *Woolfshead* in another Chapter.

Which may help us to Interpret thoſe that ſpeak of the *Jews* being *Excommunicate*; nay, and that alſo by *Seculars* in *England*, of which in *Matthew Paris* and his *Additaments*; but his *Gloſſar* rightly expreſſeth it by the Univerſity Phraſe of *Diſcommoning Townſmen*, which of old was much worſe it ſeems than now.

After *Vortiger*, *Aurelius*, *Ambroſe*, *à Convenientibus Britannis, & Convocato Regni Clero in Regem erectus eſt*: He might alſo be Inſerted into *Gildas*, for he dyed by Poyſon, if good Authors deceive us not.

At his Death a *Comet* like a *Dragon*, and the *Bards* apply it to his Brother, thence called *Uther-Pendragon*; *Florilegus* addeth, that he made two *Dragons* of Gold, Offering one, and carrying

ing

ing the other ſtill before him, whence the *Dragon* in our Engliſh *Standard*, although ſome have aſſerted much of him they call St. *George*.

That which *Weſtmonſter* or *Polydore* expreſſeth by *Præcepit proceribus Regni Convenire*; *Monmouth* thus, (in *Aurelius*) *Juſſit Clerum ac Populum ſubmonere, ad Ædictum ergo illius venerunt Pontifices & Abbates, & ex unoquoque Ordine qui ei Subditi*; and again of *Uther*, *Convocato Regni Clero, annuentibuſque cunctis ſublimatus eſt in Regem*; and again, *Communi Populorum Concilio.*

This *Uther-Pendragon* is vouched and aſſerted in the famous Conteſt of Little *Britains* Subjection to *Turon*, (may it alſo allude to the Story of *Brute*,) of which *Gratians* Decrees and *Matthew Paris*, ad *An.* 1199.

Uther being Dead, *Convenerunt Pontifices cum Clero Regni & Populo*, a Parliament (agreed by all) to Bury him *Regio More*, in the Gyants *Dance* or *Stonehenge*, which himſelf had gotten by *Merlins* help out of *Ireland*, fixing it ſo near to *Salisbury* for a Monument of that Parliament, which was thereabout Deſtroyed by the *Saxons*.

A *Parliament* I call it, ſo I may: In *Nennius* they are *Seniores Vortigirini Regis*, but in *Monmouth* (and thoſe that follow him,) they are *Prin-*

cipes & Conſules, (that is, *Comites*,) *& Barones & Cives*, called by the Kings Command, Edict, or *Writ of Summons*.

For *Arthurs* Parliaments, it would be much Superfluous to produce more proof than what already is in Sir *John Price*, *Cajus*, *Leland*, or others that aſſert his Hiſtory; this I ſhall only add, that in this of all we may Credit *Monmouth*, who is ſo punctual in nothing as in vouching each *County* and *City* that made up his Parliaments; *Ex Diverſis Provinciis, proceres Brittonum Duces*; and among others, *Dux Doroberine Conſules*, both of *Counties* and *Cityes*, *Boſo Ridocenſis*, id eſt, *Oxonefordiæ*, Lot *Conſul Londoneſiæ*, &c.

And among Forreign Princes, he Nameth the Kings of *Ireland*, *Iſland*, *Godland*, *Orcades*, *Norway*, *Denmark* and others, beſides the twelve Peers of *Gaul*, (of whom alſo in divers other places, that I ſpeak not of the twelve *Reguli*, which *Brute* found in *Gaul*;) nor was there a Prince of Note (ſaith he) *citra Hiſpaniam*, who did not appear at his Summons: which may be compared with that of K. *Arthur*, among the Laws of the *Confeſſor*, and in *Horn*, as Authentick as *Neubrigenſis*.

Come we to the *Saxons*, what I cited before from

from the *Mirror*, *Tacitus*, *Cæſar* or others, may be fully aſſerted from their Hiſtories; I ſhall not inſiſt upon *Offa's Election*, although it be clear enough from his own Words; *ad Libertatis veſtræ Tuitionem, non meis meritis, ſed ſola Liberalitate veſtra unaniminter me convocaſtis*: and the Lives now Printed with *Matthew Paris*, (and his *Henry* the third) mention divers, if not all the *Counties* which made up K. *Offa's* Parliaments. Nor will I ſpend time in *Cuthred*, *Beonerd* or others, *Depoſed* by Parliament, becauſe the *Monarchy* was not yet ſo fully ſettled.

But in the *Confeſſors* Acts we find K. *Ina* Elected (though by means of an *Angel*,) and the firſt *Saxon* Monarch; of his Laws, and Match with his *Gauliſh*, *Waliſh*, *Cambrian* Queen before, as alſo of his clear and full Parliaments in the *Militia*.

E're long we find a Parliament at *Calcuth*; *Conventus Pananglicus, ad quem convenerunt omnes Principes tam Eccleſiaſtici, quam ſeculares*: wherein, by the King, Arch-Biſhop, Biſhops, Abbots, Dukes, Senators, & *Populo Terræ*, (Lords and Commons,) It was Decreed and Enacted, That *Kings ſhould be Elected by the Parliament*; *à Sacerdotibus & Senioribus Populi Eligantur*; and that being ſo

Choſen, they ſhould have prudent Councellers, fearing God; *Conſiliarios Prudentes, Deum Timentes*; and that Baſtards (*de adulterio vel Inceſtu procreati,*) ſhould not be admitted to the Crown: it is both in Sir *Henry Spelman*, and in the *Magdeburgenſ.* cent. 8. cap. 9. pag. 583. *&c.* Edit. *Baſil* 1567.

Egbert by all is a fixed ſettled *Monarch*, but without or againſt Right of *Succeſſion*: *Ordinatur in Regem*; So *Ethelwerd*, *Omnium Conſenſu Rex Creatur*, in *Polidor*; *Ad Regnum Electus, moxque imperare Juſſus, Patriæ deſiderüs ſatisfecit*, as we read in the Monk of *Malmsbury*.

About this time the Mannor of *Mallings* in *Suſſex* was ſettled on the Church of *Canterbury* by Act of Parliament, *Conſentientibus Magnatibus*; It had been given before by one of the Kings, but it was recovered again, *Eo quod Magnates noluere Donationem illam Ratam fore*. To what Sir *Henry Spelman* hath of 838, I ſhall only add, that *Matthew* of *Weſtminſter* doth afford us *Princes*, *Dukes*, *Earls* and *Barons*, both in that and former Years, beſides Inferior *Laios* and *Clergy*, whom he calleth *Rectores Eccleſiarum*; and in *Ingulph* we find *Principes*, *Duces*, *Comites*, *Barones*, *Comitatus* and *Baronias* with *Proceres Majores*, long before the *Norman*. *Ethelwolf*,

Ethelwolf, a Monk, a Deacon and a Biſhop, yet *Elected King*, becauſe they could not find a fitter perſon for the Crown, *Neceſſitate Cogente factus eſt Rex*, in *Roger Hoveden*, & *Conſenſus Publicus in Regem Dari petiit*, in *Bale*.

At *Rome* he repaired the Engliſh Colledge lately Burnt; but he diſpleaſed the Parliament, by getting his Son *Alfred* to be Crowned by the *Pope*, and by Marrying a Daughter of *France*, whom without their Conſent he ſtyled *Queen*, which was againſt the Common and the Statute-Law, *contra Morem & Statuta*, as we find in *Florilegus*, to be compared with the *Saxon* Chronology, and *Aſſer Menevenſis*, with *Wigornenſis* and *Malmsbury*, before *Stow* or *Polidore*.

But notwithſtanding his Coronation by the *Pope*, King *Alfred* did acknowledge his Kingdom to the Bounty of his *Princes* and *Elders* of his People: *Deus & Principes cum Senioribus Populi, miſericorditer ac benignè dederunt*; as himſelf ſpeaketh in his *Will*, (ſubjoyned to his Life by *Menevenſis*;) wherein he alſo deſireth to leave his People (whom he calleth *Noble Weſt Saxons*) as free as mans Thoughts within him; *Ità Liberos, ſicut in Homine Cogitatio*.

How far *Weſt Sex* did then extend, may be known

known in the *Saxon* Laws, with thoſe of St. *Edward* and *Hen.* the firſt, where it is Styled, *Caput Regni & Legum*, (as *London* before,) to which all muſt have *recourſe*, *in omni Diſſidentia Contingentium.*

Edward the *Senior* was his Son, but *Elected* King by Parliament; *Succeſſor Monarchiæ Eadwerus à Primatis Electus*, my Author is old *Ethelwerd.*

King *Etheſtane* a natural Son, and ſo excluded from the Crown by Act of Parliament at *Calcuth*, yet being a gallant Prince (of great Hopes and Virtues) he was Elected: *Electus magno Conſenſu Optimatum, & à Populo conſalutatur & ab Archiepiſcopo more Majorum Coronatur*, as we read in *Malmsbury*, *Huntingdon* and *Virgil.*

Yet there was a great Lord, *Elfred*, who oppoſed much, and e're long Rebelled, ſcorning to Submit to him, *Quem ſuo non diligiſſet Arbitrario*; being ſent to *Rome* to purge himſelf of this Treaſon, he Forſwore it at St. *Peters Altar*, but fell down, and being carryed into the Engliſh Colledge, Dyed, and his Eſtate by Act of Parliament was given to the King: *Adjudicata eſt tota Poſſeſſio, in magnis & in Modicis quemadmodum judicaverunt omnes Optimates Regni Anglorum*, as the Kings Charter ſpeaketh; ſettling his

his Land on *Malmsbury*. How tender they were of Blood, I ſpake before, and of K. *Williams* Law, *Nequis occidatur vel ſuſpendatur*: but *Wigornenſis* and *Hoveden* ſpeak of K. *Henrys* Law for Hanging any found in *Furto vel Latrocinio*; yet in *Ethelſtane* the *Wergylds* were agreed by Parliament, and a Kings Life valued at 30000 Thrymſes.

Of *Anlo's* League among the *Saxon* Laws, that he was choſen King by ſome that rejected *Edmund*, we read in *Florence* and *Hoveden*; as of one that Scrupled in *Etheſtane*, becauſe he had Sworn Fealty to *Anlave* in the Monk of *Malmsbury*, but it might be another *Anlave*.

Edred came in by *Election*, being preferred before the Sons of *Edmund*, who was King before him; of his Parliament *Summoned by Writ*, we ſpake before in the *Militia*.

About this time were the *Conſtitutions of Odo*, *de officio Regum & Secularium Principum*; they are found in *Saxon*, and are now Printed in *Latin*, to be compared with the Statutes of *Calcuth*.

What Power they had, may appear in *Edwin*, for *Inceſt* Excommunicate by the ſame *Odo*; *& unanimi omnium Conſpiratione Edwino dejecto*, *Eligerunt Deo Dictante Edgarum in Regem*, *& Annuente Populo*, *res Regni Publica deſpertita inter Fratres*;

and

and afterwards, *Clito Edgarus ab omni Anglorum Populo Electus est*, &c. *Confluentibus Principibus, & omnis Ordinis Viris, cum magna Gloria Bathoniæ coronatus est presentibus Præsulibus, ac Magnatibus Universis, Datis singulis Donariis consuetis, quæ Reg. Coronat. dari Magnatibus consueścant*; of which *Matth. Westmon. Malmsbury, Hoveden*, and *Florence of Worcester*.

How this Mighty *Edgar* was handled and Humbled for Ravishing a kind of *Nun*, is observed by divers; and that after his seven Years Pennance, (being not to wear his Crown,) *Congregatis omnibus Angliæ Principibus Episcopis & Abbatibus*; The Crown was again Restored to him, *Coram omni Multitudine Populi Anglorum, cunctis Lætantibus & Deum in Sancto Dunstano Laudantibus*, as may be read in *Capgrave*.

Baronius of this, and a great Lords Rape, (of that time) speaketh of some *Appeal* to *Rome*, whence *Dunstan* was commanded, *Peccatori condescendere*; but he would understand it only, *si Penitens Peccatum relinqueret*; *Nec aliter* (saith *Baronius*) *potuit intellexisse*.

Edgar being dead, there was much Contest in *Electing* the next King: *De Rege eligendo Magna inter Regni Primores orta est Dissensio*; *quidam*

Eadwardum

Eadwardum; *Quidam eligerunt Ethelredum*, as the Monk of *Worceſter*, beſides *Hoveden* and *Matthew* of *VVeſtmon.* who agree alſo that at length the Arch-Biſhops, *cum Chorepiſcopis, Abbatibus, Ducibuſq; quamplurimis*, did Elect, Conſecrate, and Anoint *Edward.*

Who enjoyed it with little quiet, and among divers Conteſts of Parliament, affrighted at the Houſe *Fall*, or amazed at the *Angels* or ſome Strangers voice they knew not whence: E're long we find him hudled into Duſt at *VVarhum*, which Queen *Ælfrith* (or *Ælfted*) attoned by Hoſpitals or other works of Devotion; but a Fiery bloody Cloud followeth a Blazing Comet.

Of St. *Edwards* and St. *Dunſtans* annual Feſtivals, eſtabliſhed by Parliament, the Laws of *Canute.* It was that *Dunſtan* who preſaged ſo much ill of *Ethelred* (at his *Baptiſm*,) and to him at his *Coronation*, which yet was by conſent of Parliament; *Matris ſuffragio proceribus Congregatis*, as the Monk of *Malmsbury.*

Where we have this Compendium of *Ethelred*: *Regnum adeptus obſedit potius quam Rexit, Annis* 37. *Sævus in Principio, miſer in Medio, Turpis in Exitu*: So that we need not wonder at the

Parliament which in his Time provided, that the greateſt and the higheſt Offenders ſhould have moſt puniſhment and heavieſt Doom.

In the *Daniſh* Storm he fled to *Normandy*, and the Parliament ſent him this Meſſage, (in *VVigornenſis*, *Hoveden*, *Huntingdon*, *Florilegus* and All,) That they would receive it again on Condition he would govern more Juſtly, or more Mildly; *ſi ipſe vel Rectius gubernare, vel Mitius.*

By his Son *Edward* he cajoled both the Lords and the Commons, *Majores Minoreſq; Gentis ſuæ*; promiſing to be wholly guided by them, and ſo return'd again. But he gave ſo little ſatisfaction to his People, that they rejected his Sons, and Elected *Canute*: Who did ſolemnly Swear to them, *quod & ſecundum Deum & ſecundum Seculum Fidelis eſſe vellet eis dominus*; as the Monk at *VVorceſter*, and thoſe that follow him.

Yet it is alſo agreed, that the Citizens of *London*, & *pars Nobilium*, did Elect *Edmund Ironſide*; and that the Kingdom was alſo parted between theſe Two, by conſent of *Parliament*: and (beſide the croud in the Road,) the Laws of the *Confeſſor* do aſſert that Agreement to the

Par-

Parliament, *Univerſis Angliæ Primatibus aſſenſum Præbentibus.*

Edmund lived but a few Months to interrupt *Canute*, who was then received by Conſent of All: *Juraverunt illi quod eum Regem ſibi eligere vellent; Fœdus etiam cum Principibus, & omni Populo ipſe, & illi eum ipſo percuſſerunt*, as Old *Florence*, and *Hoveden*, beſides the *Saxon Chronology*; and the Abbot of *Croyland* hath it thus, *Omnium Conſenſu, Canutus ſuper totam Angliam Coronatus.*

Of his Parliaments and their good Laws I ſpake before, and of their Oath to the *Kingdom* much might be added: And beſides all Hiſtorians, *Fleta* ſpeaketh of his *Brief* or *Writ*, ſent to the *Pope*, and of his *Church-ſeed*, payed (as he ſaith) *Sanctæ Eccleſiæ, die Sancti Martini, Tempore tam Britonum quam Anglorum*, Lib. 1. Cap. 47.

Harold came after, *Conſentientibus quam plurimis Natu Majoribus Angliæ*: As *Wigornenſis* and *Hoveden*: *Electus eſt in Regem, fuit N. Magnum placitum aput Oxenford, & Elegerunt Haroldum*, as we read in *Huntingdon*, and *Matthew* of *Weſtminſter*.

But *Harold* being dead, *Proceres ferme totius Angliæ, Legatos ad Hardicanutum Brugæ Mittentes, Rogaverunt illum ut Angliam veniret & Sceptra Regni ſuſciperet.* And afterward, *Gaudentur ab omnibus*

bus ſuſcipitur; and *Huntingdon* addeth, *Electus eſt*: But he did nothing worthy of their Choice, and ſo became odious. : E're long, we find him ſwooning at *Lambeth*, in the midſt of a Wedding Jollity, and ſoon after Expiring.

Edward the *Confeſſor* ſucceedeth by *Election*. *Paruit Edwardus, & Electus eſt in Regem, ab omni Populo.* And *Florilegus* addeth to *Huntingdon*, That *Annuente Clero & Populo Londinis, in Regem Eligitur*: As before them both, *Ingulph*, *Omnium Electione in Edwardum Concordatur.*

His Elder Brother *Elfred* ſtepping in between the Death of *Harold* and *Hardicanute*, *Compatriotarum perfidia, & maxime Godwini, Luminibus orbatus eſt*; and little leſs than *Famiſhed*; *Godwin* excuſeth himſelf by the Kings Service or Command, but it would not acquit him, though he beſtowed coſtly Bribes.

Edward can hardly diſſemble it; *Godwine* rageth, flieth out into Rebellion, and is Baniſhed (it ſeems) by Parliament : E're long, he returns again, preſuming on his Great Friends and Alliance; but in Parliament the King *Appeals* him of his Brothers Death, which *Godwine* denies, and puts himſelf upon the Parliament, as did the King, ſaying, That they had heard his *Appeal*

peal, and the Earls Anſwer; and it remained that they ſhould do Juſtice, and pronounce Judgment.

It was in Debate, whether a Subject might Combat his Prince upon *Appeal*; but at length the Quarrel was compoſed by the Parliament, (till *Godwine* curſeth himſelf, and is choaked, as his Lands ſwallowed in *Godwins Sands*,) of which Old *Wigornenſis* and *Hoveden*, with *Malmsbury*, *Huntingdon*, *Florilegus*, and divers others, but eſpecially *Dornalenſis*, and Mr. *Seldens Titles of Honour*.

That King *Edward* named the Duke of *Normandy* for his *Succeſſor*, is affirmed by ſome that follow the Abbot of *Croyland* and *Malmsbury*; but the Monk of *Worceſter* aſſerteth *Harold* to be *choſen* by the King and Parliament, to be his Succeſſor,: *Quem Rex Succeſſorem elegerat, à totius Angliæ Primatibus, ad Regale Culmen electus*: as *Roger Hoveden* (in the ſame words.) And the Monk of *Malmsbury* confeſſeth, That *Angli dicant a Rege Conceſſum*, &c. Adding alſo, That *Harold* excuſeth his Breach of Oath to the *Norman* (in which All agree) by ſaying, It was *preſumption* ſo to ſwear or promiſe the *Succeſſion* to the *Crown*, without conſent and act of Parliament: *Abſque Generali Senatus & Populi Conventu & Edicto*; or, *Abſque Generali conſenſu*, as *Matthew Paris*, and

and *Westminster* expreſs it; but what in them, is *Tanto favore Principum*, as in *Malmsbury*, and the continuer of *Bede* *Tanto favore Civium, regendum ſuſceperit.*

Of *William* the *Norman* much in the *Militia*, much yet to be added for his *Election*, and the Peoples free conſent againſt his Conqueſt.

Londonias eum Epiſcopis plurimis Petit, & Lætanter receptus oranterque Rex *conclamatus.* So, the Abbot of *Croyland* living at the time, which *Malmsbury* expreſſeth thus: *Londoniam petit, moxque cum gratulatione Cives omnes effuſi, obviam vadunt; prorupit omnibus portis unda Salutantium auctoribus Magnatibus: Ita Angli, qui in unam coeuntes ſententiam potuiſſent Patriæ reformare ruinam, dum nullum ex ſuis vobebant induxere Alienum.* Huntingdon thus, *Suſceptus eſt à Londinienſibus pacifice, & Coronatus.* Matthew *Paris* and *Florilegus* thus; *In Magna exultatione, à Clero & Populo ſuſceptus, & ab Omnibus* Rex *acclamatus.* *Gemitivenſis* addeth, That *ab omnibus Proceribus* Rex *eſt electus, & Sacro Oleo ab* Epiſcopis Regni *delibutus*, as *Walſingham* in his *Neuſtria.* *Wigornenſis* telleth us, that before his Coronation he did ſolemnly Swear, *Coram Clero & populo, ſe velle Sanctas Dei* Eccleſias *&* Rectores *illarum defendere, nec non cunctum populum juſte regere, rectam Legem ſtatuere*

ſtatuere & Tenere, &c. So alſo doth *Hoveden*. *Matthew Paris*, in the Life of *Frethrerick* Abbot of St. *Albans*, ſheweth how free the *Norman* found our Anceſtors: *Jugum ſervitutis à tempore Bruti neſcientes, & more Normanorum Barbas radere*, (which they note in *Cæſar* alſo of the *Britains*;) and concludeth, that *pro bono pacis*, he did ſolemnly ſwear to obſerve their Old Laws; *Bonas & Approbatas, antiquas Leges, quas Sancti & Pii Angliæ Reges, ejus Anteceſſores, & Maxime Rex Edwardus ſtatuit, inviolabiliter obſervare*; (the like Phraſe we find in *Ingulph* of the ſame Laws) which was ſome Repetition of his Coronation Oath.

Some affirm that he refuſed to be Crowned by *Canterbury*; but *Newbrigenſis* telleth us, that he ſought it of him, *Tyranni nomen exhorreſcens, & legitimi Principis perſonam induere geſtiens*; but *Canterbury* denied to lay on his hands, *Viro Cruento & alieni Juris infavori*. Then he complyed with *York*, and bound himſelf *Sacris Sacramentis, pro Conſervanda Republica, &c.*

It might alſo be added, that if K. *Edward* might diſpoſe the *Crown* as his own *Fee*, yet by the *Common-Law*, or *Statute* of *Calcuth*, he could not diſpoſe it to a *Baſtard*; as K. *William*

is

is expreſly called in the Letters ſent to the Pope, from the Parliament of *Lincoln*, in *Edward* the firſt, beſides his own Charters, and of attempts to Legitimate him, (that ſo he might ſucceed by Common-law:) See the Comments on *Merton* in the ſecond Part of *Inſtitutes*, and of the Laws of *Norway* before.

But in the Old Book of *Caen*, we may find K. *William* on his death Bed, wiſhing that his Son might be King of *England*, which he profeſſed he neither found or left as *Inheritance*: *Neminem Anglici Regni Conſtituo Hæredem, non enim Tantum Decus, Hæreditario Jure poſſedi.*

That K. *William* the ſecond, K. *Henry* the firſt, and K. *Stephen* came to the Crown by *Election*, without Right of Succeſſion, is ſo much agreed by all, that it were vain to prove it. Their *Elections* and their *Oaths*, are every where among the Monks and good Hiſtorians; So alſo of *Henry* the ſecond, and *Rich.* the firſt.

But in K. *John*'s Coronation we are brought beyond diſpute, in full Parliament, of Archſhops, Earls, Barons and all others, which were to be preſent; the Arch-biſhop ſtood in the midſt and ſaid, *Audite univerſi, noverit Diſcretio veſtra*, &c. It is well known to you All, that

No

no Man hath Right of Succeſſion to this Crown, except that by unanimous conſent of the Kingdom, with Invocation on the Holy Ghoſt, he be Elected from his own Deſerts: Lectus & ſecundum Morum Eminentiam præelectus, &c. *But if any of the laſt Kings Race be more worthy and better than others, his Election is more proper or more Reaſonable: Promtus & promptius in Electionem ejus eſt conſentiendum: As it now is in* Earl John, *here preſent.*

Nor was any one found that could diſſent, or oppoſe what was ſo ſpoken; for they all knew it was not without much Reaſon and good Warrant from their Laws and Cuſtoms; *Scientes quod ſine Cauſa hoc non ſic definiverat*: For which *Matthew Paris*, or *Wendover*, may be compared with *Hoveden*, *Weſtminſter*, and others of thoſe Times.

Which ſeemeth moſt rightly to ſtate the nature of *Succeſſion*, as it was in this Kingdom. So that all did amount but to this, That if a King had ſuch Children, ſo qualified, and ſo Educated, that they were above others in Vertue, Wiſdom, and true worth, (or at leaſt, *Cæteres Pares*,) they were the moſt likely *Candidates* for the *Crown*.

But as we found before among the *Jews*,

in the ſtricteſt *Succeſſion*, where the *Crown* was eſpecially tied to the Houſe of *David*; yet their great *Sanhedrin* had alwayes the Power and Right to determine of the Claims, Intereſts, Deſerts and Vertues of Heirs, or all Pretenders: So if here we allow not ſuch a Legal power of Judging of Claims or Titles, to be placed ſomewhere or other; our Anceſtors did leave the Crown at a more blind uncertainty than in all other things they were accuſtomed, from the Law of Nature and Right Reaſon.

I might add the *Formal* of *Coronation*, joyned to the *Iriſh Modus* of Parliament, under the Great Seal of *Henry* the Fourth, where we read: *Electio à Plebe ad Regem, ut conſecretur; Poſtquam ad Idem iterum Conſenſerit*; and again, *Electum interroget Metropolitanus*, &c.

How our Allegiance was of Old, tied to the Kings Perſon, not to his Heirs nor to his Perſon but together with the Kingdom and the Laws and Rights thereof, hath been obſerved already. Much I might add of latter times, Nay, that very Statute of *Henry* the Seventh, which of late was preſſed for the King and his *Militia*, or taking Arms with him as Allegiance required; doth expreſſly declare our *Allegiance* to

be

be to the *Kingdom* with the King; and that by such *Allegiance*, men are tied to ſerve the King *for defence of him and the Land*. And for the Kings *Heirs*, I find them not in our *Allegiance*. Yet the Statutes of *Edw.* 1. are punctual in expreſſing the Kings *Prerogative*, or Rights of the *Crown*; but where is proviſion for his *Heirs*?

In *Edward* the Third, the *Judges Oaths* were made, and ſtand among the Statutes as enacted by *Parliament*, (although I do not find it ſo upon the *Rolls*;) And there is a Clauſe againſt Conſent to the Kings Damage or *Diſheriſon*: So alſo it is in the Oaths of divers in the Courts of Juſtice, as of Maſters of *Chancery*, with the Kings Serjeants, or Councel at Law, and others; but not ſo by Parliament. See the third Part of *Inſtitutes*, *Cap.* 101. Yet our Old *Allegiance* did forbid *Diſheriſon* or *Damage*, but with *Limitation*, as we ſhewed before.

The late Oaths of *Allegiance* in King *James*, and of *Supremacy* in *Q. Elizabeth* (taken by Parliament-men and divers others,) are to the Kings Perſon and his Heirs and *Succeſſors*, with particular Relation to defence of the *Crown* and *Dignities* thereof: Which is Remarkable, and that which may ſeem to excuſe ſome, in not aſſent-

ing to others which are not ſo obliged; and yet it is thought by ſome, that the main or onely meaning of thoſe Oaths, was againſt *Rome* or *forreign Enemies*: For which alſo a Declaration in the Queens *Injunctions* may be conſidered. But in all Caſes of real Scruple, I cannot cenſure any that (in a quiet humble manner, ſeeking Peace and Truth,) followeth his Conſcience till it is rightly informed.

In the Quarrels of *York* and *Lancaſter*, there was an Act (in *Henry* the Fourth) to *entail* the *Crown* upon the Kings *Iſſue*, of which four are there named: But in *Henry* the Eighth, the Parliament declared the *Succeſſion* to the *Crown* not yet ſettled or cleared enough; and then it was *entailed* again, and for lack *Heirs* Male, upon *Elizabeth*: But this again repealed in *Mary*; and again in *Elizabeth* and *James*.

How much or how little theſe annulled the *Common-law*, I muſt ſubmit to others: leſt upon debate, I ſhould be forced to yield it might be poſſible for future Parliaments to reduce *Succeſſion* to *Election*, as juſtly as ſome late Parliaments did turn the *Common-law* of *Election* into ſuch or ſuch a *Succeſſion*; which can only ſtand by *Statute*; if it be true (as all tell us) that there was

no *entailed* Inheritance but by *Statute-law*, ſince the Second of *Weſtminſter*, of which before.

How little Power Kings had over their Crown or Kingdom without conſent of Parliament; (beſides all that is ſaid already,) might be further cleared from the acknowledgments of Kings Themſelves, below the time of the Conqueſt.

In the Conqueſt, about *Inveſtitures*, K. *Henry* the firſt wrote to the *Pope*, that he could not diminiſh the uſual Rights and Dignities of the Crown or Kingdom; and that if he ſhould be ſo Abject as to attempt it, his Parliament would not permit it. *Optimates mei & totius Angliæ Populus id nullo modo pateretur.*

In the great Moot of *Scotlands* dependance upon *England*, *Edward* the Firſt confeſſed as much to another *Pope*; to whom alſo the Parliament (both *Lords* and *Commons*) wrote, that they they were all obliged by Oath to maintain the Juſt Rights, Liberties, Laws and Cuſtoms of the Kingdom; (where we may ſee their Oath of *Allegiance* to the *Kingdom*,) that nothing ſhould be acted againſt Them, *In exheræditionem Juris Coronæ, & Regiæ Dignitatis, ac ſubverſionem ſtatus ejuſdem Regni, nec non præjudicium Libertatum, Conſuetudinum & Legum Paternarum.* Theſe are

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on the Rolls, and printed on the Statute of *Merton*, and in *Walsinghams Edward* 1. and the *Surveigh* of *Normandy*.

And from other Records of the same King, we learn that when the Pope demanded the Grants of K. *John*, he answered, That he could not do it, without consent of his Parliament: *Sine Prælatis & Proceribus Regni*; being tyed by his *Coronation Oath* to keep all the Laws and Rights of the Kingdom, *Illibati*; and to do nothing that might touch the Crown without their Consent. Which may be added to that before in St. *Edwards* Laws, of the Kings Oath, to *do all things* Ritè, *per Concilium Procerum Regni.*

When the King of *France* demanded Homage of K. *Edw.* the Third, he desired Respite, till he had the Advice of his Great Council, (as we may read in *Froizard*;) because he could not act without them in such great Affairs.

And when the *Pope* demanded Homage of the same King; he referred it to Parliament, who adjudged and declared, that K. *Johns* Grants to the *Pope*, were unjust, illegal, and against his *Coronation Oath*, being done without his Parliaments Assent or Counsel: And yet K. *John's* Charter (to the Pope) in *Matth. Paris*, doth pretend it done *Communi Concilio Baronum.* And

And about *Stephen Langton*, the ſame K. *John* did write to the *Pope*, that he could not depart from the Liberties of his Crown, but would, or ſhould defend them to his Death: And hence began the Great Excommunication, which begot a Confiſcation of the Church Revenues; *& hinc ille Lachrymæ*, which could not be ſtopped, till the Crown did ſtoop to *Pandulph*; which might have excuſed the poor Hermit, *Peter*, from being ſo cruelly dragged from *Corf*-Caſtle to *Warham*.

But when the ſame King felt his Arms looſe, he laid about him ſo, that all believed he meant to ſtrike. In that *Meen* the Arch-biſhop told him, It was againſt *his Oath*, to raiſe or make War without the Conſent of his Great Court: *Si abſque Judicio Curiæ ſuæ, Contra quempiam Bellum moveret*, to be added to the *Militia*: But the fire was already kindled, and the Smoak or Flame brake out at *Nottingham*.

I muſt not touch the *Barons Wars*, except I had leiſure to diſcourſe and diſcuſs them freely: Only, as we found our *Great Charters*, made up of old Laws and Cuſtoms; ſo I might now alſo clear it more, that it was not a new Fetter on the King to have ſome *Superviſors* ſet about him,

him, for to order all his Actions; who, by his *Coronation Oath*, was tied to do nothing touching the Kingdom, but with Advice and Consent of the *Great* Council; *per Concilium, & per Judicium Procerum Regni.*

That it was so also among the *Britains*, to all observed before, I might add, the Old *Scottish* Custom of chooſing Twelve *Peers* in *Parliament* to be the *Kings Tutors*, as we may call them; for by them the King must be wholly governed; *Quorum Concilio Rex Regnum gubernare debebat*, as we may read it in *Walsinghams Edward* 1. besides their own Chronicles; that I say nothing of the Twelve *British Peers*, of which *Cambden* in *Silvribus*.

We need not much wonder at the Writs in K. *John's* Time, requiring all Men of all Conditions to oblige themselves by Oath, to maintain the Great Charter, and to compel the King thereunto: *Et quod ipsum Regem pro posse suo, per Captionem Castrorum suorum, distringerent & gravarent, ad præfata Omnia Exequenda*; when as this very Clause was in his Charter; *Et illi Barones, cum Communa totius Terræ, distringent & gravabat nos, modis Omnibus quibus poterunt, scilicet per Captionem Castrorum, terrarum possessionum, & aliis modis quibus potuerint*

tuerint; donec fuit emendatum ſecundum Arbitrium eorum. Which may be added to that before of our *Allegiance*, or Oath of Fealty to the King with the Kingdom, and of the *Kings* Oath to be guided by the Judgment of his Great Court.

Nay, as if K. *John's Salva perſona*, N. *& Reginæ* N. *& Liberorum* N. had been too looſe; in K. *Henry's* Charter it was expreſſed thus, *Licet Omnibus de Regno* N. *contra Nos inſurgere*; Nay, and to *do all things*, *quæ gravamen noſtrum reſpiciant*, *ac ſi nobis in Nullo tenerentur.*

Theſe times ſeem not to attend our Grand Maxim of State, *The King can do no wrong*; or at leaſt they underſtood it not, as ſome late Courtiers would perſwade us: Yet it is true, he can do nothing but by Law; and what he may by *Law*, can do no *wrong*: And if he do againſt the *Law*, his Perſonal Acts, Commands, or Writing, do oblige no more than if they were a *Childs*: And the Books call him an *Infant* in Law (though his Politick Capacity be not in *Nonage*; as the Parliament declared in *Edward* the Sixth;) which is not to exempt him from *Errors*, or to excuſe his *Crimes*; but to ſhew that he muſt be guided by his Coun-

cil; and that his own Perſonal Grants or Commands cannot hurt any more than an *Infants*; which may be reclaimed and recalled by the Council of the Kingdom. So the *Mirror* ſaith, The King cannot grant a Franchiſe to prejudice his Crown or others; becauſe he holds his Right and Dignities but as an *Infant*, *Cap.* 4. *Sect.* 22.

If I ſhould ſay, The *Commons* in Parliament are and were the *Kingdoms Peers*; as well as the Lords, I might vouch an Old Authority, as good as the Ancient *Modus* of Parliament, which doth often call the *Commons*, *Peers* of Parliament, as well as the *Lords*.

So, *debent Auxilia Peti pleno Parliamento, & in ſcripto cuilibet graduum Parium Parliamenti; & oportet quod omnes Pares Parliamenti conſentiant; & duo milites pro Comitatu majorem vocem habent in Concedendo, & contradicendo, quam Major Comes Angliæ*, &c.

So in doubtful Caſes of Peace and War, *diſputetur per Pares Parliamenti*: and if need be, Twenty five ſhall be choſen *de omnibus paribus Regni*; which are ſo ſpecified, Two *Biſhops*, Three *Proctors*, Two *Earls*, Three *Barons*, Five *Knights*, Five *Citizens*, and Five Burgeſſes. And again,

again, *Omnes Pares Parliamenti ſedebunt, & nullus ſtabit, ſed quando loquitur, ut omnes audiantur a Paribus.* And again, *Nullus ſolus poteſt nec debet recedere a Parliamento ſine Licentia Regis, & omnium Parium Parliamenti, & hoc in pleno Parliamento; Ità quod inde fiat mentio in Rotulis Parliamenti.*

It may be poſſible, That *Bracton* and *Fleta* with others, may uſe the Phraſe *Pares*, in ſuch a ſence; when they ſay, That the *King* or his *Commiſſioners* ſhould not judge and determine of *Treaſon*, but *Pares*. Which may be added to the 25*th* of *Edw.* 3. reſerving *Treaſon* to Parliament, where of Old, it ſeemeth only determinable; ſo that *The Mirror* would not have it *Endicted*, but by Accuſation and in full Parliament, as in King *Edmund's* Time, *&c. Cap.* 2. *Sect.* 11. and in *Edw.* the 3*d* it was enacted, That Offences of Peers, and great Officers, and thoſe who ſued againſt the Laws, ſhould be tryed in *Parliament*.

And although now the Phraſe be given to all the *Lords* of Parliament, yet it was moſt or only proper to the *Earls*, whom by Law and cuſtom the *King* ſtyleth *Conſanguineos*, and he might ſtyle them his *Peers* or *Companions*, as in Latine *Comites*.

So *Bracton*, *Comites dicuntur quaſi Socii Regis*,

& qui habet Socium, habet Magiſtrum; and in another place, *A Societate Reges, enim tales ſibi Aſſociant ad conſulendum & regendum Populum Dei*; and the like is in *Fleta*, *Comites à Comitiva dicuntur, qui cum viderint Regem ſine Freno, Frenum ſibi apponere tenentur*, &c. which is alſo in *Bracton*.

The *Mirror* is yet clearer, although the King had no Equals, yet becauſe himſelf or his Commiſſars might not be Judge, it was provided by Law that he ſhould have *Companions* to hear and determine all his Torts, &c, *Aux Parliaments*, and thoſe *Companions* were called *Countees*, (Earls) from the Latine *Comites*.

So alſo *Sarisberienſis* (cited before) in *Hen.* 2. *Comites à Societatis participatione dici quiſquis ignorat ignarus eſt literarum*, &c. ſome will have them, *Comites & Socii in Fiſca*, becauſe of old, ſome *Earls* had a third part of profits accrewing by Pleas and Forfeitures in their *Counties*, as the Laws of the *Confeſſor*, and Mr. *Selden* in his *Comes*; but he will alſo grant their name *à Comitiva poteſtate*, rather than from ſuch *Communion of profits*.

That the old *Sheriffs* alſo, who were *Vice-Comites*, did come to *Parliament*, appeareth in the Ancient Writs and Hiſtories; and yet the

Barons

Barons ſeem to be the Kingdoms *Judges*, and the preſent *Earls* may ſeem to ſit in Parliament but onely as *Barons*, who are now all Peers and Lords of Parliament.

But although the Lords were the great *Judges* of the *Kingdom*, and of all Members thereof, yet it is well known, that in full Parliament, as old as *Edw.* 3. they did not only acknowledge, but proteſt that they were not to *Judge the Commons* in Caſes of *Treaſon* and *Felony*, being not their *Peers*.

How it was in *Rich.* the Second, may be ſeen at large in the Rolls and Records now printed: In *Edward* the Second the *Commons* proceeded by the Judgment of the *Lords*, for which alſo the *Fructus temporum* cited before, may be added to all in the Road.

Appeals and Writs of *Error* were from the *King* to the *Lords*, in Eccleſiaſticals that touched the King, they were to the Spiritual Prelates, Abbots and *Priors* of the *Upper Houſe*, by Act of Parliament in 24 *Hen.* 8. till which it may be *Temporal Lords* had alſo Cognizance of *ſuch* as well as *Temporals*.

And *Writs of Error* in the Parliament were Judged by the *Lords*, for they came from the *Kings* Court, his *Bench* or his *Exchequer*; and

if

if *Errors* had been in the *Common Pleas* or below it, they ſhould not be brought into *Parliament*, but to the *Kings-Bench*, and from the *Kings-Bench*, as from the *King* (not otherwiſe) they came to the *Lords*; and although there was a formal Petition for removing the Record from the *King*, it was but of Courſe, and the King could not deny it.

Which we found granted by all the old Lawyers and Hiſtorians, (as I ſhewed before) and by the grand Maſter and Patron of Law, King *Edw.* 1. in *Britton*, becauſe none may Judge in his own Cauſe, *Therefore in Cauſes where our ſelf ſhall be Party, we do conſent, que N. Court ſoit judg Sicome Counts & Barons in Temps de Parliament.*

In the Laws of *Hen.* 1. one of the Chapters beginneth thus, *Judices ſunt Barones Comitatus, qui liberas in eis terras habent*; for in thoſe times *Barons* were by *Tenure* only, not by *Patent*, (that I know) till *Beauchamp* of *Holt* in *Rich.* 2. nor by *Writ* (that I can find) till the *Barons* Wars, but K. *Johns* Charter, is to Summon *Comites & Barones Regni majores ſigillatim per literas N.* But all *that hold in Capitæ, by general Summons* forty days before the Parliament, and that *Negotium procedat ad diem aſſignatum, ſecundum conſilium eorum*

eorum qui presentes fuerint, quamvis non omnes submoniti venerint; and the Summons of Delinquents or Suitors in Parliament, was to appear and abide the *Judgment of the Court*, not of the *King*, but of his Court, for the *King is Father* and not Judge of his People, in his proper Person, as was shewed before; and all the Books agree that he must *Commit his Jurisdiction* unto Judges in the Courts of Justice, and when he might assume great Offices into his own Hands, by Parliament in *Edw.* the third, all *Judges* were expresly excepted, and the *Judges* Oaths, and several Acts of Parliament require them to proceed according to the Law, notwithstanding the *Kings* Command or *Seal* against it, and the *Register* affordeth a *Writ* to Supersede or Revoke any such Seal from the *King* himself to any of the Judges.

And the Lord Chief Justices, as the Lord Chancellor and Treasurer were Chosen by the Kingdom, as we found before in the time of *Hen.* 3. how much more then should the *Lords* of Parliament be made by Parliament? for else they be the Kings Commissioners.

So the *Roman* saith, our *German* Fathers chose their *Lords* in Common Council, to be Judges,

in

ut iisdem Conciliis Eliguntur & Principes qui Jura reddunt. De Minoribus consultant Principes, de Majoribus Omnes. And *Cæsar* also observeth, that their *Princes* (or *Lords*) were their great *Judges*; *sed Principes Regionem atque Pagorum inter suos jus dicunt, Controversiasque minuunt.*

Yet *Tacitus* will also tell us, that with those Princes they did joyn *Commons*; *Centeni ex Plebe Comites*; which were (perhaps) the Fathers of our County *Hundreds.*

And in K. *Williams* Edition of the *Confessor's* Laws, when he inclined so much to them of *Norwey*; *Universi Compatriotæ Regni, qui Leges Edixerant*, came and besought him not to change their Old Laws and Customs of their Ancestors, because they could not *judge* from Laws they understood not; *quia durum valde foret sibi suscipere Leges ignotas*; & *Judicare de eis quas Nesciebant.*

How it was in Parliament, while there were only *Barons* by *Tenure*, would be more enquired. But of later times, *Commons* have adjudged *Commons*, and have joyned with the *Lords* in adjudging *Lords*; of which there are divers Cases cited, in the Fourth Part of Institutes, *Cap.* 1. *pag.* 23.

It

It may be conſidered, that many Kingdoms, and Common-wealths (that were not Kingdoms) in all Ages did conſiſt of *Three Eſtates*; (as of *Three Principles* in Nature, or Bodies Natural;) which might occaſion the Phraſe of *Tribe*, in many other beſides the *Romans*: who in *Three Eſtates*, were not ſo Ancient as the *Grecians* or *Ægyptians*; that I ſpeak not of the *Gauls*, *Britans*, or the *Eaſtern* Nations.

And if any would obſerve, it might be poſſible to find the Prophets hinting a *Trinity* in divers Kingdoms or Eſtates; and that not only for moulding, but for overthrowing them: Beſides the Three Captivities, or Three overturnings of the *Jewiſh* State; and the Three blows of the Goat on the *Ram* in *Daniel*; as alluding to the Three great Battles which did break the *Perſian* Empire.

And why may not the Sacred *Trinity* be ſhadowed out in Bodies *Politick*, as well as in *Natural*? And if ſo, our Three *Eſtates* may be branched as our *Writs*, into *Original*, *Judicial* and *Executive*; as ſhadows of the *Being*, *Wiſdom*, and *Activity* Divine.

If I may not grant, yet I cannot deny *Original* Power to the Commons; *Judicial* to the Lords, *Executive* to the King; as the *Spirit* to the Body, or if you will, the *Head* (or Fountain of Senſe and Motion;) But he muſt *ſee* by two *Eyes*, and *hear* by two *Ears*; as I touched before, yet his very *pardoning* although it be by Law much limited,) doth ſeem to ſpeak his

Power *Executive*: And ſo his *Writs* do ſpeak aright; *Becauſe my Courts have ſo, and ſo judged: Therefore I do ſo, and ſo, command the Judgment ſhall be executed.* And if any will aſſert the *Militia*, to this Power *Executive*, I ſhall alſo grant it to the *King*; So that it may be alwayes under the Power *Original* and *Judicial*.

This might belong to the *Lords*, and that to the *Commons*. And the plain truth is, I do not find more Arguments to prove the *Judicial* Power to belong to the *Lords*, than I do for the *Legiſlative* in the *Commons*: And (as it ſeemeth to be above, ſo *below* alſo) it may be much diſputed, That the *Legiſlative*, *Judicial* and *Executive* power, ſhould be in diſtinct Subjects by the Law of *Nature*.

For if *Law-makers* be *Judges* of thoſe that break their Laws, they ſeem to Judge in their own Cauſes: which our Law, and Nature it ſelf ſo much avoideth and abhorreth. So it ſeemeth alſo to forbid both the *Law-maker* and *Judge* to *execute*: And by expreſs Act of Parliament, it is provided, That *Sheriffs* be not *Juſtices*, where they be *Sheriffs*. But if *Execution* be alwayes conſonant to *Judgment*, and *This* to the *Law*; there is ſtill moſt ſweet Harmony, and as I may ſay, a *Sacred Unity* in *Trinity* repreſented.

That the Commons ſhould have moſt Right to the Power *Original*, or *Legiſlative* in *Nature*; I ſhall leave to be diſputed by others. I ſhall only touch ſome few Particulars, which have made me ſometimes

times to ſuſpect that by our Laws, and Model of this Kingdom, it both was and ſhould be ſo.

How the *Roman* Hiſtorian found the *Judicial* power given to the *Lords*, by our Old Anceſtors, I did obſerve before; he is as plain for the *Legiſlative* in the *Commons*: Nay, to the *Lords* themſelves, he ſaith, in *Judging* was adjoyned a Committee of Commons, both for *Counſel* and *Authority*: *Ex plebe Comites, conſilium ſimul & Authoritas.*

And again he ſheweth, how the *Lords* did ſit in *Council*, about the *leſs* Affairs; but of *greater*, all both *Lords* and *Commons*: So alſo that thoſe things which the *Commons* did determine, *Quorum Arbitrium penes Plebem, apud Principes pertractentur*; they ſhould be debated with the *Lords*, for their *Advice*, but not their *Legiſlative* Votes.

And the *Mirror* (a good Comment on *Tacitus*, in this) ſheweth how our *Lords* were raiſed out of the *Commons*, and giveth them a power *Judicial*, but where is their *Legiſlative*? Nay, the *Modus* of Parliament will not only tell us, that the *Commons* have better and ſtronger Votes than the *Lords*; but that there may be a *Parliament* without the Lords, (as well as *Prelates*.) For, there was a time in which there was neither Biſhop nor *Earl*, *nec Baro*, (ſo the *Iriſh Modus*;) and yet there were *Parliaments* without them; but never without the *Commons*. So that if the *Commons* be not ſummoned, or for Cauſe Reaſonable, cannot, or will not come, for Specialties

in which they blame the King; *Parliamentum tenebitur pro Nullo, quamvis omnes Alii ſtatus plenarie ibidem interfuerint.*

And the Kings *Oath* is to confirm the Juſt Laws which the *Commons* (not the *Lords*, but *Commons*) ſhall Elect or Chooſe; *quas Vulgus Elegerit*; So in *Latine*, and in *French* of *Edw.* 2. and *Edw.* 3. *Les quiels la Communante aur' eſlu*: And in *Engliſh*, of *Hen.* 8. and other Times, *which the Commons of the Realm ſhall chooſe.*

And if we look into the Old *Writs* of *Summons*, we ſhall find the *Commons* called, *ad conſentiendum & faciendum*; and the Old Writ addeth, *quod quilibet & omnes de Comitatu, facerent vel faceret, Ii perſonaliter intereſſent*: (As it is in the *Modus* of *Parliament*,) with ſufficient intimation that without the *Commons* nothing could be done, which the late Writs expreſs thus: *Ita quod dicta Negotia Infecta non remaneant, pro defectu poteſtatis*, &c. But the *Lords* are called, *de quibuſdam arduis tractaturi, & conſilium Impenſuri*; only as *Counſellors*, not as *Law-makers*: For the very ſame words are in the *Writs*, for the *Judges* and others coming to Parliament, although they do not *Vote* in making *Laws*.

This may alſo ſhew us, how the *Lords* themſelves did Elect the *Knights* of *Shires*, (and by Statute of *Rich.* 2. are to contribute to the charges of the County *Knights*) who were to ſit and Vote in Parliament as *Law-makers* for the whole *County*: whereas the *Lords* were there but as *Judges*, and the *Kings Counſellors*. And is it

it probable they ſhould retain to their own Perſons that for which they *delegated others?* who were there to do, *quod quilibet & omnes facerent perſonaliter*, even all that all the Lords themſelves ſhould do as *Freeholders*, not as *Lords* or the Kings *Patentees*, who might ſo be his *Councellors* or *Judges* rather than *Law-makers*; this was more left (it ſeems) to the *Commons*, who for this and other Reaſons ſhould not be Common *Judges* (as I think) in private Cauſes or of private Perſons, but of *Judges*, or of ſuch as the *Mirror* ſpeaketh, of whom elſewhere there was no Common Juſtice to be had.

But if the *Lords* had not a *Legiſlative* Right, why did the *Commons* ſend up the *Bills* to them? how came the *Lords* to joyn with the *Commons* in Paſſing of Acts?

It cannot be expected that I ſhould ſhew the Original of all Changes or Diſtempers in this Kingdom; It is work enough to ſhew our firſt Mould or Conſtitution: yet for this alſo it cannot be doubted, but the *Barons Wars* and Power might gain upon the *Commons* more than on the *King*; he had ſuch Bounds before that he could hardly be obliged more, or capable of granting much, but what was due before to all his People: But it might be eaſie for the Potent *Lords* to grow upon the *Commons* in the Name of *Barons*.

In that Name I ſay, for I cannot determine but the old Barons (being the great Freeholders and the Lords of all the *Manors* that have left their Names in our *Courts Baron*,) had by Law and Reaſon much more Power than had the Kings *Patentees*, Created *Barons* by *Patent* or *Writ*.

But this new Creation did but multiply the *Judges* or the *Kings Councellors*, for by ſo taking their Commiſſion from the King, they were only as other Judges in Inferiour Courts, and ſo did really loſe their great Power of *Judging*, which was proper only to thoſe who were the Kingdoms *Peers* and *Judges*. So that theſe Lords did juſtly admit the *Commons* (or rather were admitted by the *Commons*) into the grand *Judicature*; and it may be that as the *Barons* did communicate

their

their Power *Judicial*, ſo the *Commons* might communicate their *Legiſlative* unto thoſe who had the Name, but little of the Nature of the old *Barons by Tenure*; yet by ſo doing they might bring Confuſion or an harſh Diſcord into *Natures* Harmony.

But the main occaſion ſeemed thus, the King was tyed by his *Coronation Oath* to hold, keep and defend the juſt Laws and Cuſtoms choſen by the *Commons*; *Juſtas Leges & conſuetudines quas vulgus elegerit*; and this Limitation (*of Juſt*) ſeemed to admit of reaſon or debate, ſo much as might convince the Laws required to be *Juſt*, for elſe I know not that the King was ever tyed to them.

And becauſe he was or might be an *Infant*, he had ſtill a great *Council* about him to diſcuſs the Laws propoſed by the *Commons*; and for this Cauſe he did, and by reaſon might Summon the *Lords*, (or any other Wiſe and good Man he knew,) to come and give him Counſel, as the *Writ* ſpeaketh to the *Lords* and *Judges*, &c. *De quibuſdam arduis nobiſcum tractaturi & Concilium impenſuri*; So we find the old *Acts* paſſed *per Conſilium Baronum*, as we might ſhew in all Ages.

And becauſe he uſed to demurr at Bills, till he had the Advice of his great Council; hence it may be (for more Compendium,) the *Bill* was ſent up firſt to the *Lords*, as the Kings *Counſellors*, and if they Counſelled him againſt it, then he anſwered, *Le Roy s'aviſera*, *The King will yet be farther Adviſed*; for he did not, and I think he could not give a denyal, nor of old (perhaps) Demurred, till the *Lords* adviſed him againſt it.

I diſpute not how much the *Commons* might oblige the *Commons* without aſſent of *Lords* or *King*; Nor have I yet ſaid, that in the *Coronation Oath* the *Commons* *Juſt Acts* are called *Laws*, and to *Mould* them may be works diſtinct enough; and the plain truth is, his Oath is to hold, and to keep, and to defend the Commons Laws, (*à Tenir & Gardir & Les Defenderer*, *per ſe tenendas & protegendas*,) as well as to Grant or to Confirm.

How-

However, I do not ſee, either by Reaſon or Law, That the King was ſo obliged to the Judgment of his own created Lords (and there be few or none others left in *England*) that he might not be convinced by the *Reaſon of the Commons*, either without or againſt the Lords.

And (beſide divers *Ordinances* without any of the *Lords*,) it cannot be denyed, but in Divers ages, there were *Acts of Parliament* made without or againſt all the *Lords Spiritual*; which yet, often, were the Major part of the *Lords Houſe*, and had as good, it may be better, Votes (as Barons by Tenure) than had all the other Lords, by *Writ* and *Patent* only: which might make them Judges or Councellors, much rather than *Law-makers*.

I ſhould ſtill be far from deſiring to obtrude my own Fancies or Opinions upon any, leaſt of all to the wrong of others: Therefore, if any can produce a better Title, my Petition is, they may be heard, and may receive their Juſt Rights and Priviledges. But if this be true, (which I now only propoſe, and ſubmit to better Thoughts and Judgments,) then had the Lords of late but a Right *Conſultative* of making *Laws*.

And beſides all that was ſaid before, this ſeemeth one Reaſon, why our Anceſtors did ſo willingly follow the Vice of *Nature*, in placing the Power *Legiſlative*, *Judicial* and *Executive*, in three diſtinct Eſtates, (as in *Animals*, *Aerials*, *Etherials* or *Celeſtials*, three Regions, and three Principles in *Naturals*,) that ſo they might be forced to conſult often and much in all they did.

And if this frequent Conſultation were retained, and obſerved ſtill, it might not only occaſion good Reviews, but alſo prevent That, which to the Common-wealth I fear (and not Alone to private Perſons) may be ſometimes prejudicial, in a ſudden Vote or Act of one Houſe, or one Body; and yet one may be better much than Many, if they be not good.

It muſt be granted, that in Bodies of the Beſt Complexion and Compoſure here below, there may be ſuch Diſtemper, and

and ſuch Gangrene in ſome Members, that it may be more than fit to cut it off. Nay, what was beſt, may come to be the worſt in Putrefaction; That it may be meer Neceſſity to bury it, although it were as Dear as *Sarah* was to *Abraham*, or ſet on high by him that raiſed up the *Brazen Serpent*, which ſee e're long lye buryed with this Epitaph, *Nehuſhtan*.

And to all that is truly Juſt, the Commons of *England* will not need to plead a bare *Neceſſity*; for by Law and Reaſon too it may be ſaid, and proved (I believe,) That both the King himſelf who chooſeth by his Writ, and All the Lords, by ſeveral Votes, have left the *Legiſlative* power ſo to the Houſe of *Commons*, that they had a Legal Right to do what all the Kingdom and Common-wealth of *England* Juſtly could.

But They are Men, and therefore may be much *unjuſt*; Nay, where the Thing they do is *Juſt*, They may be much or moſt *unjuſt*. I have neither Calling nor Ability to Judge them: Nor may I act with force againſt them, for whate're I think Unjuſt: No, not if I ſhould think they did Uſurp the Crown.

For, if the Law Reports and Books deceive me not, it hath been Judged Treaſon, and ſo is; for Private Men to riſe, conſpire, or Levy War againſt one that Uſurps the Crown and Rights thereof; except it rightly were declared Uſurpation, or that others ſhould or might oppoſe him that did ſo Uſurp: Of which the Reaſons may be Great and obvious.

Let me then ſuppoſe any one Man of all the Commons in Parliament, (for I will not ſuppoſe it poſſible for All the *Houſe*) to Uſurp the Royal Crown, with all its Dues; what ſhould I, what may I doe, but mind my Calling, and attend the Judgment of the Higheſt Court, I know? That may command my Body, and my Judgment much (for ought I ſee) in things I know ſo little, as I do or can, the Due diſpoſal of the Crown, or that Mighty Burthen, or that *Royal Venom*, as the *Roman* Emperor did call it.

I did

I did, and ſtill do, believe there may, and ſhall, be ſuch a *Monarchy* ere long, through all the World; that I ſhall gladly bow, and ſtoop, and bear the Yoke: For, it is eaſy, and the Burthen light.

I hope and believe, or know that God will come, and appear, ere long, to dwell in the World: For, the *Earth* ſhall be *full* of his *Glory*, and his *Kingdom* ſhall *come*, and his *Will* be done, on *Earth*, as now in *Heaven*, So, we were taught to ask; and it therefore ſhall be fully anſwered.

I could deſire him rather (if he pleaſed) in the *ſtill ſmall Voice*, then in the ruſhing *Wind*, or *Fire*, or *Thunder*-claps: Yet ſo, he came before, and ſhook the Earth: And ſo, it ſeems again; yet once again to ſhake both *Heaven* and *Earth*. *Overturning*, *overturning*, *overturning*, (for there alſo were *three*,) *till he comes*, *whoſe Right it is*; To whom, both Kings, and Lords, and all muſt bow, (or be bowed,) to ſubmit, and caſt down their Crowns, their Coronets, and all their Glory.

The Earth ſhall reel and fall, and *riſe no more*. For, he will *viſit the Hoſt of high ones*, that

are on high; and the Kings, of the Earth, upon the Earth, they ſhall be taken, and caſt into Priſon, ſhut up in the Pit, and ſhall be viſited, or wanting. Nay, he will *darken the Sun*, and confound *the Moon*, and make the *Stars to Bluſh*; before he reigneth in Glory, *among his Antients, in* Jeruſalem. His Tabernacle then, ſhall appear again, and reſt among them: But BABYLON muſt firſt be pulled down.

We may deceive our ſelves, in chayning *Babylon* to any *Town*, or *City*, whatſoever: although one it may be, more eſpecially. But *Babel* was the *head of* Nimrod's *Kingdom*; whence *Tyranny* did ſtream through all the World.

For, although the *out-lets* of *Euphrates*, be (long ſince) ſtopped, in the *Fenns of Caldea*: Yet, there is another rapid Torrent, *Tygris*, which from *Babylon* diſperſeth much *Confuſion*, (troubled Waters,) into all the Seas about.

Nor may it wholly be unworthy of our Thoughts, how *Babylon* was alwaies the *beginning*, or the *Head* of *Tyranny*, *through all this World*. But *fatal* ſtill, to moſt that did but touch it.

So to *Nimrod*, the great *Bell of Babylon*, and the *Aſſyrians*. *Sardanapalus* might effect an end, ſo like to *Belus*; who was burnt (ſome think) with Fire from Heaven. So, that a Statue, was made of him, who left no Relique: And from hence, began Idolatry. So to *Nebuchadnezer*, and the *Babylonian Monarchy*: when the Watchers ſaw him, ſtrut and ſay, *Is not this my* Babylon?

The Story of this, and of its loſs to *Perſians*, is ſo clear, in Sacred Writ; That I need not enlarge it from *Joſephus*, the true *Beroſus*, *Megaſthenes*, *Herodotus*, *Xenophon*, or any later. Though it be alſo very conſiderable among thoſe Heathens. And ſo, is that famous Ruine of *Senacherib*, whom *Eſay* maketh a *Type* of all the Churches Carnal and Spiritual Foes: Inſomuch, that from him, rather than *Egypt*, St. *John's binding of Satan*, the old *Dragon*, the *croſſing* Serpent, ſeemeth borrowed.

The *Perſian* Empire, did begin from *Cyrus*, taking *Babylon*. It's Pride and Tyranny, did much encreaſe; then, when *Darius* won this *Babylon* again. But neither *Cyrus*, nor *Cambyſes*, *Darius*, nor *Xerxes*; (or any other

Perſian Monarch,) could much proſper, in ought of Conſequence; in *Scythia*, *Greece*, or other Places; after they were ſtained, or curſed, with *Babylon*.

The *Macedonian*, was ſucceſful very much; but not accounted, any of thoſe Monarchies, till *Alexander* loſt himſelf, by gaining *Babylon*. 'Tis ſtrange, how great a Change it made in him; that then became, a Cruel, Luſtful, and Licentious Tyrant; ſtay but a while, and you ſhall ſee him loſe both Life, and Monarchy, at once, in fatal *Babylon*.

Philip was very young, but old enough to be the Father to a famous *Grecian Epocha* (which uſed in the *Machabees*, and many others,) firſt began in *Babylon*; (as *Nabonaſſor's* alſo, long before.) The Character was *Red*, and dyed, with the *Blood* of all *that Family*.

Seleucus, durſt not call himſelf a *King*, till well poſſeſſed of *Babylon*: From whence began the Kingdom of the *North* which was, (in *Daniel*) to wreſtle, with the *South* or *Ægypt*; till the Ships of *Chittim*, made him afraid; and proud *Antiochus* was glad to bow, and ſpeak the *Romans* fair, before he could be freed from

from his *Circle*; though it were, but made in *Sand*, by a riding Rod.

Babylon was fatal to the *Romans* also: for, so far they prospered still, but never over, or beyond the Streams of *Babylon*. *Charan* was Tomb to *Crassus*'s Army, as before to *Terah*: nearer much to *Ura*, (found in divers,) then to *Urchoa*, with *Ptolomy*.

Much I might speak of *Parthians*, *Persians*, *Saracens*, *Turks*. These seem as *Angels*, *bound beyond Euphrates*; but being *loosed*, and possess'd of *Babylon*, their Tyranny was divilish. Now it is, (or rather is not, but poor *Bagdad*) in *Turkish* Hands, most times, except an Army of *Locusts*, ('tis remarkable,) appear as *Harbengers* before the *Persian*. But his *Sun* must be eclipsed, with the *Turkish Moon*, before the Glory of *Jerusalem*.

But to return to *Babylon*, while *Romans* kept the Scene, they acted well; but 'twas a *Tragedy*, for some have thought they brought more Shame and Sin, and Tyranny, from all the Coasts of *Babylon*, then *Brass* from *Corinth*, or Antiquities from *Greece*. Thus *Babylon* was *buried* in *Rome*, but *Rome* is *ruined* by Babylon.

Edom

Edom and *Babylon* run Parallel, in Judgment (through the Prophets,) and the *Jews* were plain enough, in saying, or in proving, who is *Edom*, in this western World.

This *Edom*, did give name, all say (since learned *Fuller* wrote his *Miscellanies*) to the *Red*, or rather, the *Reed Sea*, but this may be doubted; and the rather, (with other great Objections; for it is scarce a drop, to that the Antients call the *Erythrean* Sea, or *Mare Rubrum*, never belonging unto *Esau*:) in that *Edom* will hardly be found, to denote *Red*.

A great Master of the *Arabick*, and other kinds of Learning, in *Cambridge*, Mr. *Wheelock*, did almost perswade me once that *Edom*'s Name, is better sought and found, in *Arabick*, where it may sound as much as *Eator*, or a *Glutton*: who did sell his Birthright, for a mess of Broth; as *Adam* (the first Glutton,) sold his *Paradice*, and all, for a little Apple, or the like.

This Etymology, of *Edom*, I could the rather believe; because in *Tuscan*, *Latin*, and so many other Tongues, *Edo*, *Eso*, *Esor*, (and the like Words,) do all signifie *Eating*: and

in

in other Nations, the *D*, is only changed into *T*, its Couſen Germane.

How *Edom* came to be a Type of *Rome*, (as the *Jews* ſo conſtantly affirm,) may appear in due Place. This is very conſiderable, that among all other Judgments threatned on *Babylon* and *Edom*, (for they are equals in moſt;) this is one, and the chief of all, that they ſhall be *perpetual Deſolations*, and ſhall never return, or riſe again, when they be fallen.

Tyre and *Sydon*, might return again; *Ægypt* and *Æthiopia*: for *Chuſh* may reach to *that* alſo, from *Chuſiana*, on the Banks of *Euphrates* and *Tygris*; whence they paſſed through *Arabia*, (and there left their Name alſo,) croſs the *red Sea*.

Moab and *Ammon* ſhall eſcape, from the laſt Northern King in *Daniel*; and they ſhall return in the latter days (a noted Phraſe.) Nay *Sodom* it ſelf, ſhall return and rejoice with her Siſters, *Samaria*, (for *Ephraim* in this alſo, ſeemeth to be the *firſt born*;) and with *Jeruſalem* the yonger Siſter. So, ſnake the Type alſo, when *Lot*, and *Abraham*'s Tennants of *Sodom* were, (in the fourteenth great Year) delive-

red,

red, from the Oppreſſion and Tyranny of all the *four grand Monarchies*, of *Shinar*, or *Babylon*; of *Elam*, or *Perſia*; *Ellaſſar*, (the Prince of *Ellas*) or *Greece*: which three alſo, may lie in the *Heifer*, *Ram*, and *Goat*, (God's own Emblems, of the three firſt Monarchies;) which were *divided*, and *broken* about the *Dove*, and *Turtle of* Abraham; *and the King of the* Gentiles, may typifie the *Roman Empire*: Although I could yet believe, there may be more in it. *Antichriſt*, may ſeem to have two Horns, one in the *Weſt*, and Chriſtian Temple: the other in the *Eaſt*, and Jewiſh Temple. (*Edom* and *Babylon*) *Mahomet* did riſe, about as bad a time, at Rome, as *Hildebrand*. But it may be, his Horn muſt end in *Gog*, and *Magog*, (whence the King of *Gogim*, in *Geneſis*;) which is very probable to be *Alleppo*, the Turks greateſt Reſidence in *Aſia*, directly *North* to *Jeruſalem*: and of old, not only *Hierapolis*, but *Magog* alſo, in ſome antient Heathen Authors. But *Edom* and *Babylon* ſhall mourn and lament, in that *Eternal Deſolation*; while the whole Earth, beſides, (ſo ſpeak the Prophets,) ſhall rejoyce.

The

The World must be renewed, the Promise and the Blessing to *Adam* must not fail one tittle, nor could the Flood (or its worst Causes) disanul the Grace of God, established so long before. Nay, it was continued, confirmed, and inlarged, in the new Charter to *Noah*. The Scripture is very observable; although I dare not be too confident in ought of *Noah*'s Blessing, or Will or Commands, found in the Cave among the *Tuscan* (Rarities much rather then) *Antiquities*. Yet With much of those also there is more to be compared, then I have yet seen in *Lazius* or *Berosus* (for *Annius* may be excused, who found it with that Title,) but the Book was written by a *Jew*, if *Tsemack David* do not deceive me.

And the Jews with much consent, expect this glorious Change. Both touching themselves, (who never yet ('tis thought) possessed half their promised Land, from *Euphrates* to the Sea, from *Lebanon* to *Ægypt*, nay, where ever their Feet did tread) and others also of the Pious Gentiles.

To this day they shake their Palms in Triumph every way (in their great Hosanna;)

in alluſion to the Pſalms and Prophets; who ſay, that *every Tree of the Wood* ſhall ſhout, rejoyce, clap Hands, and ſing for Joy.

Nor do they think the time far off, and that from better Grounds perhaps, than is the old Prediction in their *Zohar*, which foretels their Redemption ſhould be upon, or about, the Year laſt paſt; to which they add ſomewhat they ſee, or have heard from their Brethren of *Juda* in *Braſile*: or of *Iſrael* in other parts of *America*, which they cannot much believe (till it be better confirmed;) although it be with many Arguments aſſerted by a grave ſober Man of their own Nation, that is lately come from the Weſtern World.

It is ſtrange, if it ſhould prove true, and that which might regain ſome of *Eſdra*'s Credit, (beſides all of Chriſt, and the *Jews* long *Captivity*, with their return about the Ruine of the *Roman Empire*, whoſe *twelve firſt* Cæſars, with divers others, he deſcribeth clearly;) in that alſo of the *ten* Tribes paſſing through a River or Strait, (may it be the *Strait* of *Anian*) in a long Journey of many Months or Years, *to a Countrey not inhabited.*

It

It is alſo remarkable, that ſuch good Authors ſhould relate the Traditions of the *Mexicans*, or others in thoſe parts; coming a great Journey, with an Ark carried before them on Mens Shoulders, with their God therein, and what others have obſerved of *Circumciſion* found in ſome of thoſe parts: with other Rites of *Tribes*, *Heads of Tribes* and *Families*, with ſome pretty Ceremonies of *Marriage*, *Funerals*, and *Waſhings*; not altogether unlike the *Jews*, or *Iſraelites*.

However, it ſeems they left many of their Brethren behind them in *Aſia*, though it muſt not be in *Tartary*. The World will not admit of it of late, although it was very current a while, in *Dan* and *Naphtalim*, Mount *Tabor*, or I know not what, in *Ortelius* and others.

But Millions of them, are ſtill found in *Perſia*, and other parts of *Aſia*, though I give no Credit to their *Kingdom* in *Caramania*, or elſewhere deſcribed or feigned by *Benjamin*, the Jew in *Eyre*. Yet with him muſt be condemned (if he lies in all) ſome of our own, that have travelled in thoſe parts.

Not only Maſter *Herbert*, who hath many

conſiderable Paſſages; beſides that of a mighty high Peak of *Taurus*, for *Ararat*, not very far from the *Caſpian Sea*; which he ſaith the Inhabitants do ſtill, to that day, call the *Deſcent from the Ark*, which would much have pleaſed Sr. *Walter Raleigh*, and other learned Men, that would not have *Noah* come out of *Armenia*; though ſo many *Heathens* alſo do record it thereabout.

But to return to the *Jews*, and their Return; It is ſo clear, and ſo full in the Scriptures (both Old and New), that I need not ſeek it in the *Apocrypha*, where yet are many Predictions of it clear enough, eſpecially in *Tobit*. I mean the old *Hebrew Tobit*, brought from the *Eaſt*; for that we have is broken and imperfect much, being only taken from a *Jew*'s Mouth, that Tranſlated it to *Jerome*; as himſelf confeſſeth, if I forget not. All the *Prophets* ſpeak clearly of it; but *Jonas*, that of him we have, was but a ſecond Prophecy, which, beſides all the *Jews*, ſomewhat in his own Words doth intimate: And we need no more; for, in the Kings we find *Jonas*'s Prophecy for *Iſrael*'s, (even *Iſrael*'s) Reſtoration, which is there alſo

alſo carried up to *Moſes's* Song (cited alſo in *Ezechiel*, beſides other Prophets) as that which is clear enough for what we ſpeak.

So is *Moſes* alſo clear, that *great Troubles ſhall befal them in the latter Days*: that is, in the *time of the Meſſiah*, as they all confeſs; for ſo they ſtill interpret the Phraſe. And to this *Place*, with others, they refer their Afflictions, under *Meſſiah Ben Joſeph*. Whom (I hope) they begin to think already come; although *Ben David* do not yet appear to them, but *Moſes* addeth, that the *Gentiles* ſhould alſo rejoyce with his People *Iſrael*. For he would *again be merciful to his People, and his Land*, and ſo that Song endeth; which was to be kept and conſidered, in the latter Days, or time of the *Meſſiah*.

Abraham was firſt told his Seed muſt be as *Duſt*, and afterwards as *Stars*: Not Stars for *Multitude* I think, but *Glory*. Except there be more *Stars* then the Jeſuite thought, who hath lately wrote a Book in Praiſe of the *Virgin*; being nothing elſe but one Verſe. (*Tot tibi ſunt Dotes Virgo, quot ſidera Cœlo*;) which he hath changed above a thouſand times, (and might have done it much oftner,) keeping

keeping the very ſame entire Words in a true Verſe.

Abraham the *High Father*, had two Sons in ſpecial. *Iſhmael* a Type of the *carnal Jew* (who had alſo twelve Princes, twelve Patriarcks) from *Hagar*, the Earthly *Jeruſalem*: coming firſt from *Egypt*, and growing proud, ſhe is driven out (into *Captivity*) but ſoon returns again upon an Angels Call.

Yet ſhe muſt only ſtay till *Iſaac* (a real Type of *Chriſt*) is born, and weaned a while; and then, her ſelf and Son (for mocking *Iſaac*) muſt be turned out of doors, from *Abraham*'s Houſe, or Church. It was very bitter to good *Abraham*, but ſhe muſt out. *And ſhe is yet in Bondage* (in the Wilderneſs, a long Captivity,) *together with her Son poor Iſhmael.*

But in this Wilderneſs, when ſhe is near Deſpair, ſitting alone, wringing her Hands, for Grief and Woe; and her poor Son, at a diſtance crying, or rather gaſping for Life, *God will hear, God will hear, (Return O God to the many thouſands of* Iſrael,) and he will call, and *ſpeak kindly to her, in the Wilderneſs*: He will then

then open her Eyes to ſee a Well, *a Fountain of living Water*. The *Well of him that hath lived long*, and *looked on her*.

For, when the Poor and Needy ſhall thirſt ſore, and their Tongue cleave to their Mouth, (when they ſit in Darkneſs, he will ſee and execute Peace,) *he will open a Fountain in the Wilderneſs*: So do the *Pſalmiſts* and *Prophets* often alude to this of *Hagar in the Wilderneſs*, an Hiſtory of all the Bible, much, I may ſay, more remarkable.

After this ſhall *Iſaac* come and ſeek his poor Brother *Iſhmael*, he alſo ſhall come and dwell with his Brother at his Well *Labairos*; and thereabout he met *Rebecca*, though I dare not draw the Paralels. But it may be worthy of inquiring, that about forty Years old, he ſhould meet his Wife at *Hagar's* Well.

The *Jews* do tell us pretty Stories of old *Abraham's* coming oft, and knocking at the Door to call and ſee his Son, though *Hagar* was much abroad and yet they ſay, ſhe did return again at laſt into his Houſe. And ſome will alſo have her to be *Keturah*, on whom *Abraham* had many Sons, that peopled the

the East. These seem to be the *Abrahamides*, or *Brachmonides*, of whom we hear so much, yet see so little, but their Names.

Certain it is, what ere became of *Hagar*, that *Ishmael* returned to *Isaac*, or rather *Isaac* to *Ishmael*. For, besides that of *Isaac*'s living so much at *Ishmael*'s *Well*, the Text is clear, for their being together at *Abraham*'s Death, or Funeral. And *Ishmael* (a better Man then some may think) dyed in Honour, or as the Phrase is, *in the midst of his Brethren*, if I mistake it not.

Isaac (a Type of *Christ*) *had two Sons*, that Wrestled and Fought so soon as they had being. *Edom* the eldest (which the Jews will have to be the *Roman Christian Church*, the first *born to Christ*, or *Isaac*;) yet must come to serve the *younger*, when he cometh up.

Jacob (the Father of all *Israel*) had two Wives. *Leah* the visible Church of carnal Jews, or Gentiles, bleer eyed; not so lovely to her Husband as was *Rachel*. Who was long barren, but at length beareth *Joseph*; And she is then to leave her Father's House:

For

For he will give them up (for ſmiting *Joſeph*,) until ſhe that travailed bring forth, and receive her Son with Joy.

In this flying Poſture, *Jacob* meets the Angels at *Mahamin* (it was the way with the *Canticles*.) He wreſtleth and prevaileth with God, and with *Edom*. 'Tis a great Myſtery: But I am tedious.

Poor *Rachel* is loath to leave her Idols. Theſe ſtick and ſtain her (but they muſt be buried in *Bethel*,) till at length ſhe come to *Bethelem-Ephrata*; and there ſhe travaileth with *Benjamin*; to her, *Benoni*; for ſhe muſt expire as ſoon almoſt as he is born. Nor did ſhe regard the Words of thoſe, that told her, that ſhe had a Son: but ſhe ſhall receive him again with Joy.

I dare not ſay that blear-Eyed *Leah*, was typified by old *Lilith*, of whom the *Jews* ſpeak ſo much, and ſo Ill; becauſe ſhe did ſo much diſpleaſe our Father *Adam*, till God in pity cut him aſunder, (as they ſpeak, and ſo doth *Plato* alſo,) and of one of his *Sides* made *Eve*. Otherwiſe his Body had been more round; Male before, and Female behind: To which they ſay the Pſalmiſt doth allude; beſides that of *Moſes*: *Male and*

Female created he them, or him; at the firſt.

They have alſo an antient Tradition, of which, the *Talmud*, and many of their beſt Writers; that there ſhould come two *Meſſiahs*, and the firſt ſhould attempt, but not perform the full *Deliverance*: But that he ſhould dye, and leave them in a doleful Plight, ſo long, till a ſecond came, and relieved them all, and Reigned over them, as *David*: For, they call him *Ben-David*, as the former *Ben-Joſeph*, or *Ben-Ephraim*.

Not only for his Relation to *Joſeph*, but they uſe to call any Noble Gallant Man an *Ephraimite*. And in that of their *Firſt Meſſiah*, they ſeem to allude to a common Story among them, of *Ephraim*'s hardy Attempt to carry them forth from *Egypt*: But his Raſhneſs coſt him many thouſand armed Men, drawing the Bow, *but turning back in the Day of Battle*; as the Scripture ſeemeth to allude in ſeveral Places.

Thoſe *two* diſtinct Men, (with the *Jews*) ſeem but *two* diſtinct Eſtates in *One*, and the ſame *Meſſiah*. Which two Eſtates ſeem alſo to be Tipyfyed by *Joſeph* and *Benjamin*, good *Jacob*'s *Darlings*, and the Sons of his beloved *Rachel*, the good Jewiſh Church.

Some-

Somewhat it is the Scripture meaneth, I believe, in bringing *Chriſt* from *Bethlehem-Ephrata*: by which we are alſo led, and bid by St. *Matthew* to look on *Rachel*, falling in Travail there, and weeping for her Childrer, *who were not*.

And often did ſhe Weep, if ſhe could ſee how often *they were not*, or ſeemed not to be. So *Joſeph* in the Pit, in the *Dungeon* in *Egypt*, in *Ephraim*'s firſt Attempt from *Egypt*. So *Benjamin* in that famous Hiſtory, when all *Iſrael* wept as well as *Rachel*, becauſe *Benjamin* was not.

Yet again, how oft did ſhe, muſt ſhe Weep? poor *Rachel* weepeth till ſhe ſee them all again: and ſo ſhe ſhall in the *latter Days*, as ſaith the Prophet *Jeremiah*. And then alſo the Children of Barren *Rachel* may be more, than of Fruitful *Leah*.

And another Prophet ſaith, *they ſhall be given up* (as deſerted by the Father) *till ſhe that Travailled ſhall bring forth*: Nay, till ſhe have leiſure to attend with Joy, that a Man-child is born to her. Some have thought the Travailer to be *Gentile Church*, but it is Interwoven with *Bethlem Ephrata*.

I need not ſpend much time to Parallel the

two Eſtates of our Meſſiah with this *Joſeph*, and *this Benjamin*; *The Lord will dwell between his Shoulders*, more then when the Holy Place was in the Tribe of *Benjamin*: he alſo was cut off, (as *Joſeph* was) but did prolong his Days and proſper. Yet a little while, I hope, and *Benjamin* ſhall come down from his good *Father*; and then ſhall *Joſeph* (*Ben Joſeph*) make himſelf known to his *Brethren*, who did hate him, ſhout at him, caſt him into the Pit, deliver him to the Gentiles.

But he was brought from Priſon and from Judgment: At thirty Years he ſtood before the King, and was made Governour of all. His Brethren muſt come and bow down to him, tho they remembred not his Affliction; yet he preſerveth them in *Ægypt*: and tho Dead, yet goeth before them to *Canaan* in his Coffin; of which the Jews have many Stories, in the Life of *Moſes* and others.

They ſhall ſee him who they have pierced, and ſhall weep over him: For he ſhall melt them by ſaying, *I am* Joſeph *your Brother*.

But he muſt ſtay till *Ægypt* be deſtroyed by Famine: and be glad to yield it ſelf to *Joſeph*; he muſt ſit till his Enemies be put under him. And then ſhall come the Reſtitution; when *Babylon*

bylon is pulled down. It filleth all the Scene as yet: And whil'ſt *Satan* acteth as if he were *God*, it is no Wonder that we ſee ſo little done of Good. I muſt not trouble the World with the time of this great Change: But it may be ſought (and perhaps found) not only by Types, but plain Expreſſions in *Moſes*, and the *Prophets*; beſides our Saviour's Words, and the Revelation.

This I may obſerve, that as *Ægypt* was broken before the *Tabernacle* was firſt raiſed, and *Edom* before the firſt *Temple*, and *Babylon* before the *Second*; So both *Edom* and *Babylon* before the *Third*, in *Ezekiel* and St. *John*: for I now ſeek not the three Temples in *Ezekiel*, *Sinah*, and *Rohoboth* (digged by *Iſaac*) as do many *Jews*.

Of all the Crimes of *Edom* and *Babylon*, this hath a heavy Charge: that the afflicted *Heber*, the People of his Love. But thoſe that Curſe them muſt be Curſed. How great a ſhare in that this Kingdom had, I cannot ſay, there are Miſtakes on either ſide.

We ſay they *Crucifyed a Child*, or more: They do deny it, and we prove it not. They ſay we drove them out from hence: it is not clear.

They

They were in Favour once at Court; they did deſerve Reſpect, who brought the Crown two hundred thouſand Pounds *per Annum* (little leſs, as mony now,) for divers Years together. And King *John* did give or ſell them a Charter of *Prieſthood*, or rather *Presbytery*; for I know not, that by this they ever *Sacrificed*. And the Charter yet remaineth, for old Jacob *the Presbyter of all the* Jews *in* England, during Life.

Their Uſe and Brocage was ſo burthenſom, that in King *Edward* the Firſt, one Parliament did quite deny them Leave of *Uſury*; and that did *draw* them, but not drive them *hence*. It was *their Motion* that obtained a *Writ* for ſafer Paſſage, which yet ſecured them not, but that the beſt of them were drowned in the Thames, by Fraud of thoſe that undertook to Waft them over: But they hanged for abuſing thoſe poor Jews.

The next Parliament did grant a whole Fifteenth *pro expulſione Judæorum*, yet they had but a *Writ for a Paſport*; and they were but 15000 and odd, if I may believe a great learned Judg, who has ſo Reported and Recorded.

How they are now, I need not ſay: although

though I might alſo bear them Witneſs, that they are yet Zealous in their Way: nor do they wholly want Ingenious Able Men, of whom I cannot but with Honour mention him that has ſo much obliged the World, by his learned Writings, *Rab Menaſſeh Ben Iſrael*: a very Learned Civil Man, and a Lover of our *Nation*.

The more I think upon the great Change now coming on them, and all the World; the more I would be Juſt and Merciful to them, to all: nay Univerſal Sweetneſs if I could; a Chriſtian overcoming all with Love.

And ſuch one ſhould be more I believe, if one had conquered all the World. For then there would be nothing left, but *Self* to Conquer. Then one would return in Love, and ſay, *come forth my Enemies and Live, enjoy your Rights, your Peace and Liberties, with all your Joyes. There ſhall not an Hair fall off your Heads. By this it ſhall be known, that God alone muſt Reign.*

I know that *Antichriſt* and *Babylon* muſt fall, and riſe no more. But theſe are more in Hearts, then any Walls, or any City. Not only in the *Heart*, much leſs the *Name* of *King* or *Lord*: I Judg my ſelf, or ſo I ſhould much rather,

rather, and much heavier than I Judg another. For I ſee much cauſe to fear my ſelf, leſt I may keep a little Pretty, rather Ugly Antichriſt within my Breaſt; whil'ſt I am buſie to deſtroy ſome others, more then it in others, or my ſelf.

There is a *ſweeping Rain*, oppreſſing more then any *Thunder*. There is a *Pride* moſt proper to a *Leathern Coat*. And one there was that trod on *Pato's* Pride, with *Prouder* (it was ſaid) and fouler Heels.

I find it in the Scriptures: thence I know that *Babylon* muſt down, and be thrown down with *Violence*. More *Force* it may ſeem, than *Form of Law*.

Yet, even in ſuch things, God ſeldom doth that which is not juſt in Man's Eye alſo. Nor did he ruine *Babylon*, or ſpoyl *Ægypt*, till they oppreſſed *Iſrael*. Nor did he bring the *Jews* by pure Force to poſſeſs *Canaan*, before they had purchaſed *Sechem* or *Machpela*; with ſuch a Legal Seiſin as might warrant Force, or Forcible Diſſeiſors, that ſo held Poſſeſſion againſt the true Owners.

And what ever Force may appear in pulling down of *Babylon*, I do not Read or Know that the new Temple, or the *new Jeruſalem* ſhall be built

built with *Violence*, or by *Violent Men*, that may ruffle much in forcing *Babylon*; But they may periſh by the Sword that uſe it moſt. *Moſes* was the meekeſt Man alive, yet he had a ſpecial Commiſſion, (that was a *Patent ſealed with the Arms and Impreſs of Heaven*) to ruine or impoveriſh *Ægypt*. He pulled down indeed, but he raiſed little but a *Tabernacle*: Only a *Shadow of good things to come*. And it muſt be aboliſhed by him that was typified by *Joſhua*: For *Moſes* could not bring them into *Reſt*, altho by Force and a mighty Hand he brought them out of *Ægypt*. *David* was a Warriour and a mighty puller down: He cut off the Head of *Goliah*, and weakened all the *Philiſtins*; he threſhed *Ammon*, *Moab was his Waſhpot*, *and over* Edom *he caſts his Shoe*. He ſhall be brought into the ſtrong City, and ſhall harrow *Edom* and ſow it with *Salt*, or cut off all the Males but one or two that can eſcape by Stratagem.

But yet, *he muſt not build the Temple*: for he was a *Man of Blood*; and when he would but remove the Ark, *Uzza* is ſmitten, and *David aſhamed* as well as afraid *at that great Breach*, which remaineth to his Day; I had almoſt ſaid prophetical of our Times.

From *Perez Uzzah* the Ark is brought but

a few Paces; for it must rest a long time with *Obed-Edom*, a mysterious Name, and when it comes from thence to the City of *David*, it must be content with a *Tabernacle*, with many Forms and Ceremonies: and among others *Obed-Edom* is the *Porter* to that Tabernacle.

Shall some of *Edom* also be brought in; although his *Desolation be eternal*, or for an Age of Ages? May they come to be *Porters*, as *the Gibeonites were Hewers of Wood for the House of God? His Judgments are in all the World*; and so they must be long. But Judgment *is his strange Work*, and *he delighteth in Mercy; he will turn again, and be Merciful unto us*, *Nay, all the World shall Sing and Rejoyce.*

The Sea shall roar a while, and all that in it dwells: but there shall be no more Sea, no more Death, or Hell, but what shall be sealed up in the great Pit. But *the Earth shall Rejoyce, and his Goodness shall be over all his Works: they shall all bless him, they shall all praise him. Nay, all the Trees in the Forest shall Rejoyce.*

This is also the more considerable, in that it was so clearly expressed in that joyful Psalm, which was made and Sung at *David's bringing the Ark from* Obed-Edom: But it is divers times repeated and inlarged in the Psalms and Prophets:

phets: For it is a great Myſtery. *Solomon* the *King of Peace* muſt build the *Temple* up: there muſt not be a Hammer heard, or a Stone Squared, but before it cometh thither.

He is married to *Ægypt*, and in League with *Tyre* and *Sydon*: the Letters are yet to be found and read in old Authors: then *Pineda*, he is reconciled to *Moab* and *Ammon*: and the *Arabians* bring him Gifts, as did the *Magi* from the *Eaſt*. He ſpake peace to the *Gentiles* afar off: not only to the *Queen of Sheba*. I do not reject or believe all the Titles or Hiſtory of *Precious John*: But I could with a Sight of *Solomon's* Works; and others in his famous Library at *Amyra*.

Nay, to the *Iſles* of the *Gentiles*: We need not travel to *Peru* as ſome have done, to ſeek *Ophir*: it is nearer much, and better found in *Zealand*, one of the beſt Iſlands I ſuppoſe in all the World: and the learned Author of the late *Peleg*, maketh demonſtrative Paralels of this with *Ophir*, or the *Taprobane* of Ancients.

Yet even *Solomon*, this peaceful King, had two great Enemies; one was an *Edomite* (*David* left but very few,) and the other was a *Syrian*; I do not ſay an *Aſſyrian* or *Babylonian*, altho theſe often come into the Name of *Syria*,

ria (a vaſt Latitude.) But the Text ſaith, the *Syrian* reigned about *Damaſcus*, which ſeemeth near the Borders of the old *Magog*; and it may be compared with the Cloſe of the 16*th*. or rather with the middle of the 20*th*. of the Revelation; or with much in *Ezekiel*, about the time of *his Temple*; or it may be, long after it was built.

The ſecond Temple was built in a time of Trouble, and great Fear: For they held their Swords together with their Trewels. But yet it was not built by *Power* or Might, (much leſs by *Force*,) *but by his Spirit and Goodneſs*, that did overaw his Enemies.

Zerubbabel did hardly live to ſee his Temple; or at leaſt the City finiſhed. This was but a gentle Viſitation, as the Jews uſed to call it: not a Reſtoration of the two Tribes, much leſs of all, as the Prophets promiſe: Nay, ſome of them promiſed after this Return from *Babylon*.

And this Temple was imperfect much, it wanted divers Glories of the former: *Five* in ſpecial, as the Jews affirm (at the want of ה in the Word foretelling its Glories) which never were recovered: tho great *Herod* did encreaſe the outward Glory. And there was a

greater

greater than *Solomon* to give Peace in that place: and ſo he did to all the World. 'Tis known how oft the *Romans* ſhut the Temple of their *Janus*.

But why could not this Peace endure? was it becauſe this Temple was not *founded in Peace*? for *Ephraim* envyed *Judah*, and *Judah* vexed *Ephraim*. Nay among themſelves they could not agree: for ſome wept, as others laughed.

But *when the People did with one Voice, and one Conſent, Sing out to Bleſs and Praiſe the Lord* (ſo ſaith the Type in *Solomon*,) then, and not till then, *the Glory of God came down and fill'd the Houſe; ſo that the Prieſts could not enter*; nor it may be, needed in that Glory. This was but a Type of ſomewhat yet to be fulfilled, more, much more in building of the new Temple.

Solomon did alſo then pray that *all the Earth might come to know the Lord, and ſerve him, as his People Iſrael did.* And this was heard and anſwered by God; and almoſt all the Prophets, who with much Conſent aſſure us, that *the Earth ſhall be full of the Knowledg and Glory of God.* And *that he ſhall be ſerved with one Conſent, and with one Shoulder: even from the riſing of the Sun, to the going down thereof.* (For it is worth obſerving how Learning and Religion, came along,

along with the Sun from East to West.) *In every Place shall Incense be offered with pure Oblation.* And then *Ephraim shall no longer envy* Judah, *nor* Judah *vex* Ephraim.

If I durst assert *Esdras* to be Scripture in any thing; it should be in those most considerable Prophecies of the Ruine of the *Roman Eagle*, to which it may be, our Saviour also alludeth; as he seemeth to do in divers other Passages, found no where that I know, but in *Esdras*.

And about the Fall of that *Roman Eagle*, he seeth a great Multitude of *Fighters*, (as in Armageddon.) But at length arose a *Man*, who was the Son of Man, that called to him a *peaceful People*, that should leave off War, for it should cease in all the World; *their Swords and Spears must be beaten into Plow Shares and pruning Hooks.*

And when the Multitude (in the Revelation) stand and Sing the new Song, the Song of *Moses* (of the Sabbath, or the Red Sea,) and the Song of the Lamb (not yet known abroad:) Then, and not till then, is the Vail of the *Tabernacle in Heaven Opened.* But there was yet a Smoke to cloud that Glory.

But when the seventh Angle shall sound, and all the Kingdoms of this World become the

the Kingdoms of our Lord, and of his Chriſt: *and thoſe be deſtroyed, that deſtroyed the Earth.* Then *ſhall the Temple of God be fully opened in Heaven, and the Ark of his Teſtament* (the Model ſhewed to *Moſes* on the Mount,) *ſhall be ſeen* and viewed in that Temple: not in a *Tabernacle*, but a *Temple*: then alſo ſhall the four Beaſts (which in *Ezechiel's Mircavah*, the Jews will have to be the Emblems of the four great Monarchies in *Daniel*:) *even theſe four Beaſts*; and the Elders of Presbyters; *with all the Angels of Heaven, and all the Creatures of Heaven and Earth, and of the Sea, and under the Earth*; (how long, or how far this may reach, I know not) all ſhall fall down about the Throne, giving *Honour* and *Bleſſing*, and *Praiſe to him that ſitteth on the Throne, and to the Lamb, for ever and ever. And the four Beaſts again in ſpecial ſay Amen.* There is much ſpoken of a *Perſonal Reign of Chriſt upon Earth*: I do not affirm it, yet I believe there is more, much more for it, then I have yet ſeen in any of the many Writers on *Daniel*, or the *Revelation*. And beſide the Judgment of ſo many, if not *all the Orthodox* in *Juſtin Martyr's* time: there be ſome very antient, (almoſt Apoſtles) that relate how our Saviour himſelf diſcourſed of this Kingdom, which the *Acts* do but Intimate.

But

But for my part, I do acknowledg my ſelf to be ſo ambitious, as to expect ſomewhat much higher and better then his *bodily Preſence*, which yet I long for: *as the Captive haſteth to be looſed.* But this would pleaſe or profit little without *Life and Power*, and Real *Light* above our *Doubts*, *Diſputes*, or *Demonſtrations*.

Nor would this much profit man, or pleaſe God, I think, without *true Love*, proportionate to ſuch a Light.

The firſt Paradice had one River parted into four Streams, and one *Tree of Knowledg*: but of *Evil* rather than *Good*. The new Paradice ſhall have many Rivers of Knowledg, to cover the Earth, and many Trees of Knowledg alſo; whoſe very *Leaves* ſhall *heal the Nations*; what then ſhall their *Fruit be*, but *Reſurrection from the Dead*?

I ſee ſo much of this vain World, that I cannot but earneſtly deſire and long for a *new Earth*, and for *new Heavens*: but yet I ſhould not value or deſire them much, were it not that in theſe I hope to ſee *more Juſtice*, and *more Mercy*.

Is not that the *World to come*, of which the *Hebrews* and our Saviour ſpeak, as *pardoning all* but *one Sin*? The Phraſe is common with the Jews;

Jews, who do expect it on Earth; and the Prophets make it a *pardoning World to come*, ſo *that the Inhabitants ſhall not ſay they are Sick*, for *their Iniquities ſhall be forgiven.*

I muſt confeſs my Hope is, that he that bid us ſtill forgive ſo much, that we might be like our Father: meaneth himſelf to forgive very much; being himſelf the Founder and great Patron of that great Order of Chriſtians, whoſe Badg is this, *Conquer thy ſelf, and others Evil by doing Good.*

Elijah muſt *level* his Way, and many (if not all the Antients,) thought *Elijah* yet to come; which our Saviour alſo ſeemeth to intimate with that at his *Transfiguration.* And the Jews repeat the Verſe of the Prophet *Malachi*, which ſeemeth alſo to ſpeak of two *Days*; and all *Elijah's* Work was hardly fulfilled at Chriſt's firſt Coming.

However when that *Levelling* is over and paſt, the *Lamb* ſhall come of *another Spirit. For the Son of Man came not to deſtroy, but ſave*: He is the *Prince of Peace.* And when he ſhall come *to Conquer*; He will come on a *White Horſe*, and ſhall ride on *Proſpering*, *becauſe of Meekneſs, with Truth and Righteouſneſs. He will have Mercy and not Sacrifice*, and that will pleaſe

him more than *all burnt Offerings*. He will make *our Officers Peace*, and *our Exactors Righteouſneſs*: For *Violence ſhall be no more*: But a King ſhall Rule in Judgment, and a Man ſhall be an hiding Place from Storm and Tempeſt.

I will hear what the Lord God will ſpeak; For he will ſpeak Peace (as well as Truth) *to his People, and to his Saints; that they may no more return to Folly*, or have Cauſe to Bluſh. *Mercy and Truth ſhall meet together, Righteouſneſs and Peace ſhall kiſs each other. Truth ſhall ſpring out of the Earth, but Mercy* (this the Jews called *Righteouſneſs*) *ſhall come down from Heaven*; for the Kingdom of God conſiſteth in *Peace* and *Joy*, as well as *Righteouſneſs*.

For *the Fruit of Righteouſneſs is Peace, and Aſſurance for ever; being ſown in Peace, of them that make Peace*. Such is the *Wiſdom from above*, and ſuch are the *Fruits of the Holy Spirit*.

What ſhall we ſay then to *the Meſſenger of the Nation*? or to the *Angel, ſpoyling* Edom *and* Babylon? What? *That the Lord hath founded* Sion, *and the Poor of his People ſhall truſt in it: He will leave an afflicted poor People, and they ſhall truſt in the Name of the Lord; and then will he give them a pure Language, that they may all call upon him with one Conſent.*

Thou

Thou hast indeed smitten Edom *and* Babylon, *Let not thine Heart lift thee up, for why wilt thou meddle to thine own Ruine? that thou shouldest also fall, thou and all* Juda *with thee.*

Shall the Sword devour for ever? Knowest thou not that it will be Bitterness in the latter end? How long shall it be then, ere thou bid the People return from persuing their Brethren.

Again, and yet again, I bow my Soul and Pray, and humbly Beg; That all may be both *Just*, and *Justly done*. Not with Justice only, but with *Pity* and great *Compassion*, and much *Mercy*, *for in many things we fail all.*

I say that the *Commons* also failed to the Common-wealth. But to speak freely, altho I will not Judg the *Commons*, yet I cannot Justifie that House; but I must also Condemn what was lately done to them also, (even to the House of *Commons*) by that Army which hath often been acknowledged, to have both served and saved them from Ruine or Slavery.

I desire not to dispute matter of Fact, nor can I Judg it. It is true that by expres Law (besides all of Reason and Nature) there should be no Force of Arms near, or so much as in appearance of overawing the Parliament: and I looked on it as an heavy Charge on some

that perſwaded the *Scots*, or the *Northern Army*, to look as if they would have moved towards the City and Parliament againſt its Will. Nor can we forget, it was ſo late, that the Houſe voted it Treaſon to act by Command of Parliament, under a viſible *Force*.

But how ſhall wee know or diſcern this viſible *Force*? They may be *Free* under that which I may think a *Force*, and therefore I muſt believe them to be *Free*, unleſs they *declare* themſelves to be *Forced*. For by Judging what is the Priviledg of Parliament, I may certainly break their Priviledg; while I inveigh againſt others for ſo doing, and by this incur the Danger of thoſe that Judg before the time, or out of Place; for I ſuppoſe I ſee 100 of the *Commons* ſeized and ſecured; I cannot Judg it a *Breach of Priviledg*, becauſe I know not but it might be done by the Command, Order, or Conſent of *Parliament*; till it *declare* the contrary: Or if not by Order of *Parliament*, yet it may be by ſome Officer, *Virtute Officii*; or if by private Man, yet upon ſome emergent *Neceſſity*, or ſuch Reaſon, that I or others may not Judg, much leſs Condemn but in Parliament. For it may be poſſible perhaps (but I hope not probable) that ſome Parliament-men may deſign or conſent

ſent to ſuch a dangerous *Treaſon* or *Felony*, that it may be the Duty of Officers or others to detain or ſecure them, till the Cauſe be heard in Parliament: and Reſiſtance of any that detain upon *ſuſpicion* of *Treaſon*, hath been adjudged Ground enough to Juſtifie Detention and Securing, till there be a legal acquitting. And that *ſpecies* of *Treaſon*, which is againſt the *Kingdom*, or the *Kingdoms Army*, may ſo much concern a *General*, that it cannot be wondered if he ſhould be the Accuſer or Attacher: who is the Kingdoms *Sheriff*, and intruſted with the *Poſſe Regni*; which he ought to manage for the beſt Advantage of the Kingdom: *prout & melius viſum eſt, in Honorem Coronæ, & Utilitatem Regni*: as the *Confeſſor's* Laws *de Heretochiis*; and yet he is no Judg of this, but muſt ſubmit it to the Courts of Juſtice; and in ſpecial to the Parliament, when ever it concerneth any of that Body Repreſentative.

I ſay not, that the Houſe ſhould not, or need not demand their Members; and the Cauſe of any ſuch Detention (which ſtill ought to be ſubmitted to the Judgment of Parliament,) but I think it may be poſſible to ſuppoſe ſuch a Caſe as cannot ſoon be heard and adjudged; and in ſuch Caſe, I do not know it is abſolute-

ly

ly Neceſſary for the Houſe to ſit ſtill, and to refuſe to act at all, till all their Members be reſtored. For by this it might be poſſible for a few miſchievous Perſons, ſtill to keep the Parliament in ſuch a perpetual Imployment, or rather Idleneſs; that they ſhould do nothing but Diſpute their own *Priviledg*, and breach thereof. Whereas it may be ſuch a Caſe, that ſhould make them that be Free, to be more active in the publick Service, *Ne quid Detrimenti capiat Reſp.* while ſome cannot, and others will not come to do their Duties.

Yet if any be Zealous to ſpend their Time, or rather the *Kingdoms*, in Diſputing an airie empty Species of *Priviledg* (which themſelves may reflect or refract at Pleaſure, every Moment,) I may not Condemn or Judg them: But when the Sea breaks in, I ſhould fear it a Madneſs in my ſelf, to ſit and frown with a Spaniſh Gravity, chafing at thoſe that broke down the Banks, till the Waves come in, and drown me with my Friends and Country.

I do not deny but that by the Law and Cuſtom of Parliament, 40 may be an Houſe of Commons as well as 400. Yet to ſpeak freely, I could believe it to be the Duty of ſuch 40 to call in their fellow Members, eſpecially when

when the Work is great and weighty. And I must confeſs I ſhould ſomewhat wonder to ſee 40 ſit alone, about the greateſt Matters poſſible, without ſo much as calling the reſt, or ſending Writs for new Elections.

The *Modus of Parliament* telleth us, that as the King might not abſent himſelf (but in the Caſe of Sickneſs, and then he muſt lie in the ſame City or Mannor,) without Conſent of Parliament; ſo alſo there was great Caution againſt the Members abſenting themſelves; ſo that it was expreſſed in the old *Writ* of Election, that they ſhould not depart from Parliament without Conſent of Parliament. But I know not whether the Crime may be ſo great in thoſe that deſert their Truſt; as it may be in thoſe who permit them ſo to do.

But I will ſuppoſe the Houſe of *Commons* is both *Full* and *Free*; which we may, and ſhould (for ought I know,) till they declare it otherwiſe. Yet when they are freeſt, they have Limits; for they be not Infinite. Nay when they are moſt Free, they are moſt bound to good Orders and to right Reaſon.

They which bring them to this at any time (though by any Army of Arguments, or any thing elſe that is Reaſonable,) are ſo far from enſla-

enſlaving them, that indeed they make them Free, compleatly Free; and when they are ſet Free, they are the more Inexcuſable, if they be not Rational; for when Men are Slaves, they may be the more excuſed, for acting without or againſt *Right Reaſon*; which to Man is the Natural Law of *Liberty*.

Which is not a Power to act *quicquid Libet*, *what we liſt*, (for this may be *Licentious*, and a Luſt or Paſſion may enſlave a Man as much as any Chain or Fetter,) but *quod Licet*, what is *Juſt* and *Rational*; or as ſome of the *Schools* expreſs it, by the *Wills* following the Dictates of the *Underſtanding*, or *Right Reaſon*, rather than by a blind irrational *Indifference*, or Power to *Contradict* its own Acts, or to *ſuſpend* its own Acting; which is not found in all, no not in the beſt Agents, in their beſt Acts about the chiefeſt Good, moſt *Free* and yet moſt *Neceſſary*: and wherever ſuch *Indifference*, or ſuch *Suſpenſion* is, it is a Stain or Spot, and may be Slavery rather than an Ornament or Badg of *Liberty*: For it ariſeth from ſome Darkneſs, in not diſcerning what is beſt; or from ſome Inconſtancy, or Inability to follow it; which without *Suſpence* ſhould be always Embraced, and followed by *Right Reaſon*.

But

But what is this *Reaſon*? is it only *Diſcourſe*, as the *Schools* uſe to expreſs it? who yet find ſomewhat higher in Man, even a kind of *Intuition*, which the old Philoſopher did make the higheſt Sphear of all in Man's Soul, *Concentrical to Good*, when both *Reaſon* and *Fancy* were *Excentrical*.

But to me the Word λογος (which we tranſlate *Reaſon*) ſeemeth to be the firſt uſed of *Proportion* in the *Mathematicks* (Mother of all *Analogy*, and of moſt Learning to the Ancients:) ſo that thoſe were called *Rational* Agents which acted in *Proportion*.

So the ſame old Philoſopher (that ſaith, God ever acteth in *Geometrical Proportion*,) placeth Reaſon in a *Mean*, between two Ends or Objects: and the Maſter maketh *Reaſon* to be Miſtreſs, both to *Art* and *Prudence*, (this is *Proportion* in the *Moral*, that in the *Natural* Part of Actions;) and deſcribeth *Virtue* by a *mean Proportion*, which he calleth *Reaſon*; *as a Wiſe Man would define it.* As the Sacred Writer of the *Number of a Man*; that is perhaps *Rational*, a *Logarithm*, or a piece of true *Algebra*, which we may Tranſlate *Mans Numbring*: For of all Viſible Creatures, *Man* only was found to uſe *Numbers* and Proportion.

But what is this *Proportion*, which Denominates an Agent to be *Rational*? Is it between the *Actor* and the *Object*? and do *Rationals* only obſerve a *Difference* of *Objects*; whereas *Natural* Agents go on alike to all, *Eodem modo ad Extremum poſſe*? But *Rationals* ſtill do, or ſtill ſhould act in *Proportion* ſuitable to themſelves, and to their *Objects* alſo: which is two or three times obſerved by the Prophet *Eſay*, in deſcribing *Reaſon*, in that of *Ploughing* and *Threſhing*, and of *Puniſhing*, with that of the *rough East-Wind*: *Chap.* 27, 28.

But there is a more inward *Proportion* yet to be found in *rational* Agents, when their Activity is *proportional* to their *Being*, and to their *Knowing*: and when ever theſe three are preſerved *Equal* or *Proportional*, there is *true Liberty*. So it ſeemeth to be in *God*, (may be ſo darkly ſhadow out the Bleſſed Trinity;) His *Being*, *Knowing*, and *Activity* are Infinite (and therfore *Proportional* to each other) and abſolutely *Free*, altho *Neceſſary*.

By his *Knowing*, he freely comprehendeth; and by his *Acting*, freely diffuſeth his own *Being*: So that all the *Creatures* ſeem as ſeveral Rayes, or *Ideas* (rightly called *Species*,) *acted*, that is, diffuſed through infinite *Knowledg*; from,

or

or rather within Infinite *Being*; which the *Jews* call the *Place*, *in which we Live, and Move, and have our Being.*

Creation was of ſomewhat *not appearing* before; ſo both Reaſon and the Scripture teach: But how it was, or could be, from meer *Nothing*, would be more conſidered: and it may be the Hebrew Word may ſignify to *Cleer*, *Manifeſt*, or *Reveal*, ſomewhat hidden before; rather than to make of *Nothing Something* (*De novo*,) which may ſeem impoſſible, if there ever was *Being Infinite*, (as much real *Entity*, as there could be,) altho not ſo viſible in all its *Moods*, as it was ſince the *Revelation*, which we call Creation.

All the *Creatures* have ſome Image of the Creator's *Being* and *Activity*; it may be alſo ſome kind of *Knowing* ſuitable to both: for which there is much to be ſaid, and perhaps more then is yet written by any *de ſenſu Rerum*: where we might alſo find Cauſes of *Antipathies*, and ſuch as are now called *occult Qualities*. And wherever *Activity*, (for this is moſt to Sence, and by this we uſed to meaſure *Freedom*, tho it ſhould it be in *Knowing* as much as in *Doing*,) is preſerved *equal*, or *proportional* to *Being*, there and there only, ſeemeth to be true *Liberty*:

which may moſt appear in the *Actings* of thoſe *Beings* which are moſt *knowing*.

Shew me then the *Sphear* of Man's *Being*, and you may quickly find the *Meaſure* of his *Freedom*: his being is by all agreed to be *Rational*, and *Reaſon* therefore is the proper Meaſure of his *Liberty*. For he is then *Free*, when his *Activity* is preſerved equal or proportional to his *Being*; this is *Rational*, and ſo muſt that: and Man is then, and then only Free, when he can Act *what he ſhould Act*, according to *right Reaſon*. This is the Law of his *Nature*, which is *Rational*; and *Reaſon* is his Royal Collar of S. S. S. or a Chain of Pretious *Pearls*, which *Nature* hath put about his Neck and Arms, as a Badg of Honour, and moſt happy *Freedom*.

This Digreſſion would be ſcarce excuſable, but that our Law doth ſo adore *right Reaſon*; that is a *Maxim*, What is contrary to *Reaſon*, is contrary to Law.

Knights Service (with Ward and Marriage) draweth *Relief*: but *Reaſonable* by common Law, before the *Charter*, and the Statutes do aſcertain *Aydes*, which were before to be *Reaſonable*.

Guardian in *Chivalry* need not account: but Guardian in *Socage*, *Prochein Amy*, or *Tutor Alienе*,

ene, be liable to a *reaſonable* Account: For the old Writ requires *Compotum rationabilem*. But an *Action* of *Account* will not lye againſt an *Executor*, to ſuch in *Socage*; (tho this hath been preſſed in Parliament,) becauſe it was not *reaſonable*; but in caſe of the *King*, it was ſo adjudged.

Tenant at Will, ejected by his Lord, ſhall by Common Law have *reaſonable* Time to remove his Family and Goods, with free *Egreſs* and *Regreſs*, during the ſaid Fine *reaſonable*.

Tenant by Copy, with *Fine uncertain*; is not wholly at his Lord's Pleaſure: for by Common Law, he muſt only make a *Fine reaſonable*.

Housboot, *Hedgboot*, *Ploughboot*, all *Eſtovers* (both for Tenants and Priſoners) muſt be *reaſonable*, and ſo muſt all Partitions between *Parceners*, and upon *Elegit*, *&c.* Which are therefore not left to the Sole Pleaſure of a Sheriff, or of any other, but in a ſworn Enqueſt, as we may find in the Writ *de Rationabili Partitione*.

In divers *Mannors*, there be many petty Cuſtoms which can hardly be brought into publick View: but for thoſe, and for all, the Law hath a ſhort Text, *Que neſt pas Encountre reaſon, poit bien eſtre admitte & allowe*: And the great

great Commentator addeth, *Lex eſt ſumma Ratio.*

If you ask him who muſt determin of *Reaſon*, or what is *reaſonable*; his Anſwer would be, that if any man find himſelf aggrieved by his Lord, or his Fellow Tenants, the Law ſuppoſeth the *Judges Breaſt* to be a ſufficient *Cloſet*; or, if you will, a *Caſtle for right Reaſon.*

I remember one Caſe, (and there may be divers,) in which the *Law* leaveth private Men, (even in their own Cauſes,) to be *Judges of Reaſon*, or what is *reaſonable*: It is a caſe of *Eſcuage.*

The great Charter diſpenſeth with *perſonal Service*, (in ſome Caſes,) where it is not *reaſonable* a Man ſhould ſerve in Perſon: and the *Reaſon* of this runneth ſo through all *Eſcuage*; that if any Man will ſend another in his Room, the Law diſpenſeth with it, ſuppoſing he ſeth *reaſon* not to attend in Perſon: Nor may he by Law be compelled in ſuch Caſe againſt his own Reaſon.

Moſt, if not all other Caſes in that *Tenure*, are by Common Law left to the immediate *Reaſon* of the Parliament, which may be worth a little Pauſe; as that which may ſomewhat clear

clear the grand Queſtion of the *MILITIA*.

It is true that by the Common Law, and by the *Laws* of the Confeſſor, cited by ſome, to aſſert the *Commiſſion of Array*; Men ought indeed to have *Arms*, and them to keep in Readineſs for Defence of the King and Kingdom.

But it is alſo true that this, beſides other Paſſages, is ſtrangely cited and applyed for Defence of that *Commiſſion of Array*. For altho the Cloſe of the Sentence be as they ſay, *Juxta præceptum Domini Regis, &c.* Yet the ſame Sentence (had they cited it whole,) ſeemeth to be much more againſt the *Array*, than for it.

For the *Arms* required there, muſt be *Aſſeſſed by Common Conſent*: and that alſo limited in that very Sentence, to the Proportion of ever Man's *Eſtate*, and *Fee for the Defence of the King and Kingdom*; *and for the Service due to the Lords, Juxta præceptum Domini Regis*; and theſe Words in this place do refer to the immediate precedent Words, *Servitium Dominorum*; which by the Cuſtom of the Kingdom was ſo Limited, that in all *Homage* or *Fealty*, there uſed to be added this *Salvo*; *Salve lay foy que jeo Doi, a Seignior le Roy.*

And

And leſt King *Edward's* Laws ſhould not be plain enough *ſecundùm quod eis ſtatutum eſt, & adjudicatum, & quod debent*: King *William* the firſt, by Advice of his great Council explained them thus; that *nothing ſhould be exacted or taken, but Liberum Servitium*; free Service. *Prout ſtatutum eſt, per commune concilium totius regni; as it was eſtabliſhed by the Common Council of the whole Kingdom*: which is alſo a clear Proof, for ſuch a *Common Council* in his time, and before.

In the ſame Laws, this *William* (whom ſome call the *Conquerour*) granteth that *Cities, Burroughs, Caſtles, Hundreds*, and *Wapentakes, ſhould be ſo kept and watched, as the Sheriffs*, Aldermen, *&c. ſhould beſt order for the good of the Kingdom, per Commune concilium*; by ſuch *Common Council*: and a little after giveth this Reaſon, *Becauſe they were founded for publick defence of the Kingdom and People thereof, idcirco obſervari debent, cum omni libertate, integritate, & ratione*; a very happy Trinity.

And for *Service*, with ſuch *Arms* as were by *Common Council* aſſeſſed: The ſame King (called the *Conqueror*) hath indeed ſuch a Law, *That all Earls, Barons, Knights, &c. ſhould have and keep themſelves in Arms and Horſes, as it became*

came and beloved them: So much of this Law, the *King's* Declaration cited for the *Commission* of *Array*, But the following Words of that Law quite dash such *Array*; for the Close of all is, *according to what they ought to us, by their Fees and Tenure*, to do by Law; *& sicut eis statuimus per commune Concilium Totius Regni*: Even by Parliament, for the Common Council of the whole Kingdom.

These *Laws of King William*, with the *Additions* and *Emendations of the Confessor's*, were afterwards confirmed by King *Henry* the 1st. as appeareth by his *Charter*; not only in the *Exchequer*, but in other Places also; besides that we have in *Matthew Paris*; a Copy of which was kept in every County. And the same *Charter* was again confirmed by King *John*, (they know it may be proved;) and again by King *Henry* the 3d. and so it came into the great *Charter*, and by Consequence Confirmed, in more *than* thirty *Parliaments*.

In which also there hath often been, most especial Care of this touching the Militia, being one of the main Causes of those Statutes, entituled *Confirmationes Chartarum*, and of those *De Tallagio non concedendo*; *except by common Consent in Parliament*: besides many later Statutes,

in King *Edward* the 3*d.* and *Henry* the 4*th.* with other Times.

I deny not that in *Henry* the 4*th.* there did issue out a *Commission of Array.* But it is as true, that in the last Parliament of the same King *Henry* the 4*th.* it was again declared as the undoubted Right of this Kingdom, not to be charged with ought, for Defence of the Realm, or Safeguard of the Seas, but by their own Will and Consent in Parliament.

By which we may learn how to interpret all the Precedents acted by the King, for his *Array*: and by how much the more is it true, that some Commissioners of *Array* have been *confirmed by Parliament*: which is always needful to Confirm *any such Array*: Which yet is not proved ever to be Paralelld in any Parliament, for ought I can find.

For in all yet seen, there is no such boundless Authority, given to two or three Strangers, (or others,) to compel all Men but themselves, to provide and bear Arms, *how*, and *when*, and *where* it shall seem good to such Commissioners: Which at once seemeth *to Dissolve all Laws of Liberty.*

Which by the *Mirrour* with other old Lawyers, is chiefly placed in this; *not to be tyed to*

any

any Man, but by ones own Conſent. In explaining of which they are Large, in ſhewing how the *Tenures* of the Crown were appointed for *Defence of the Kingdom*: and none *tyed to Service*, but according to this *Tenure*; which was aſſeſſed by *Common Conſent.*

And if ſuch *Commiſſions of Array*, might be Legal from the King; *Eſcuage* is ſo far from the worſt or hardeſt *Tenure*, (as it was commonly thought,) that it would prove the *beſt*, and eaſieſt in all the Kingdom.

For if the *Eſcuage be uncertain* by *Tenure*: None that hath read ſo much as *Littleton*, can be Ignorant, that by the Common Law and Cuſtom of the Kingdom; it is not to be aſſeſſed by the *King*, or any other, but by *Common aſſent in Parliament*: which hath now done much to ſettle this alſo.

And *if Certain*, then is the King as really limited as the *Tenant*. So that the King cannot command or require his Tenant, but according to his *Tenure expreſſed.*

Not *when he will*: For it muſt only be in *time of War*, and this is not to be determined by the King, but by the *Courts of Juſtice.* When they *are open*, as appeareth by all the Law-Books, in the Caſe of *Roger Mortimer*, *Tho-*

mas Earl of Lancaſter, and divers others.

Nor in *all times of War*, but only in a *Voyage Royal*; to which *Eſcuage* is moſt properly tyed: and this muſt not be determined by the King (who may be a Child, Sick, Incompoſed,) nor by *his Marſhal*, or *Conſtable*, but by the Courts of Juſtice.

Nor in a *Voyage Royal*, *as long as the King may pleaſe*: But according to the *Tenure*, uſually forty Days for each Knights Fee; and it hath been demurred in Law, when thoſe forty Days ſhould begin.

They are *Littleton's own Words*, and very Pregnant; as if he thought that by Law, *the King could have no Hoſt, or Muſter, but by Conſent of the Commons*: and he was as like to know our Laws, as moſt Men living now.

Nor is the Tenant to ſerve, but according to his *Tenure* in *Gaſcoyn*, *Wales*, *Ireland*, *Scotland*, to which *Eſcuage* proper, (but rather from the *Scute* or *Shield*;) and the Books have divers Caſes, where the King hath required Service, denyed by Limits in *Tenures*; which the *Courts of Juſtice*, eſpecially Parliament, in all Ages did determine.

Nor is the King to determine *how the Knights ſhall ſerve him*; whether in *Perſon* or not. For this

this is by Law, at the Tenants Choice. And if the *Knight* or his Proxy, will not attend, or ſtay out his Time: yet cannot the King proceed againſt him, but in a *Court of Juſtice*, and not by *Marſhal Law*: Yet the *Marſhal's Certificate* is a Legal Evidence, that the Tenants did not appear in Service; but his Reaſons muſt be heard with all juſt Pleas.

Nor *with what Arms or Horſes, the Tenants may ſerve*: all is expreſly limited; *if the Tenure be certain*: and if not *Certain*, it muſt (as all Lawyers know,) be aſſeſſed by Parliament; which did alſo at firſt eſtabliſh that, which now is *Certain*.

Nor would it be difficult for a mean Hiſtorian to ſhew how in all Ages, the *Militia* was as well *diſpoſed* and *managed*, as it was *Moulded* by *Common Conſent*, which is very conſiderable; and the rather, becauſe all that wrot for the *Array*, did moſt, or only run out in this; That *the King had the ſole diſpoſal of the Militia*: not attending, that if *this had been proved*, (which never was that I know) yet *this* was only but *half*, and it may be *the leaſt half of the Queſtion*. For by that ſtrange *Commiſſion of Array*, the King did not only challenge the Right of *Diſpoſal*, of the *Legal Militia*, already ſetled; but

alſo

also of *Moulding* and Making *a new Militia*, not yet made or ever thought of, that I could learn by any of our Ancestors.

If I were forced to enter the Lists, which I would avoid, as a Purgatory; (being otherwise, I say not better imployed, than in such unprofitable Wranglings,) I should believe it not very difficult, much less impossible to maintain; That both the *Moulding* and *Manage*, (the *Make* and the *Use*) of the Kingdoms *Militia*, was ever immediately subject to the Command of the *Courts of Justice* (especially the Parliaments,) which may in a large Sense of Law, be called *the Crown*, or *King's Politick Capacity*; but never I think to the King's Person alone, which in Law is still an Infant, as the *Mirrour* expressly calls him, though his *common Capacity* be *ever of age*. Be the Person a Child, an Infant, Lunatick, *Incompos Mentis*, or a Woman, which sure our Ancestors could not but deem a most unlikely Person for a wise and *valiant General*.

If I were compelled to argue this, it should not be only from *right Reason*, or the Law of Nature, which yet to me, seemeth much to encline this way.

The *Feet* are to bear, and the *Hands* to help,

to

to hold, to bind, and rub the *Head*, (in any Distemper or Weakness,) but if I should hear of any Man born with his *Heels* in his *Neck*, or his *Hands* tyed to his *Head*, or immediately *under his Chin*, I should think it a Monster.

And wherever both *Hands* and *Feet*, are at their due Distance from the *Head*, with divers Nerves and other Vessels, Bones and other parts between them: yet I never heard or knew that they did *obey* the *Head*, till it did command *itself*, and them also by *Reason*; or till it also doth *Obey*, not only its own *Eyes* and *Ears*, but the *Common Sense* and *Reason* of the Soul.

I must confess I have heard that *Tycho-Brah*, did sometimes imagine that he found *Mars below, or under the Sun.* But if it were really so, it seems as great a Prodigy in Nature as the new Star, and that of *Mars*, rather than a *new Star* in *Cassiopeia*, might presage those sad Commotions which have since followed in many Places of *Europe*, while *Mars* hath been so much *below or under the Sun.* For by Nature *Mars* was said, and ever thought to be placed immediately *under Jupiter*, the great Judg, *or Court of Justice*; which should command the *Sword.*

And so it doth by *Law.* For in *England* the

Judg-

Judgments given in any *Court* of *Record* do ſo command the *Militia* for *Execution*; for a *Writ* runs of Courſe, which was made by *Common* Conſent, and cannot be denyed.

Releaſe to all Actions, will not hold againſt *Execution*, except all *Suits* were alſo releaſed: But this is ſuch a *Suit* as the Law calls a *Demand*, which may not be denyed.

And for other Caſes of Routs, Riots, unlawful Aſſemblies, Invaſions, *&c.* The *Poſſe Comitatus*, and by Conſequence the *Poſſe Regni*, was Diſpoſed and Commanded by known, ſworn Officers; that acted *Virtute Officii*, by the Law and Cuſtom of the Kingdom.

For it may be known that the old *Juſtices*, or *Conſervators of the Peace*, were choſen by the Counties; as appeareth by Writs, yet to be read from the Rolls of *Edward the Firſt*. And now their Commiſſion and their Power dependeth on *Parliament*.

Nor could the *Chancery* have given ſuch a Power, had it not been ſo Eſtabliſhed by Parliament, which hath alſo ſtrictly provided for their Legal Nomination and Election. For which the Statutes of *Richard* the Second, *Henry* the Fifth, *Henry* the Sixth; and before them all, *Edward* the third thought it were not printed.

And

And it is very well known, how by the Common-Law and Custom of the Kingdom, all the *Sheriffs* do command the *Posse Regni* in their several Counties; and that not onely *Execution of Writs*, which may be thought to be Matters of *Peace*; But the Lawyers know, that Sheriff is *Custos Legis* and *Reipublicæ*, as well as of *Peace*; of which he is the Principal *Conservator* in his Shire and County. Nor may it be Presumption to say, That all these *Sheriffs* also ought to be, and so were, *chosen by the People*; as is sufficiently found in *Hoveden*, and in the Laws of the *Confessor*. And in full Parliament of *Edward* the first, it was declared to be the Law and Custom of the Kingdom; and therefore so settled in the Choice of the People.

There was in latter times some *alteration* made in Choice of *Sheriffs*; but it was by *Parliament*.

However, we all know, that *Headboroughs*, *Constables*, (greater men than themselves know) *Coroners*, and divers others, are yet still chosen in the Counties; and do act by Custom and Common-Law. And the *Sheriff* also, however he be chosen, yet he stands not by Commission; nor ought to fall with Kings death: But is a standing Officer, by Common-Law. Who may command all Lords, Knights, Gentlemen, and others in his County, by his *Writ of Assistance*. Which issueth of course to every *Sheriff*.

I need not say, how little the Kings Personal Command or Warrant, can by Law interrupt or hinder the

Proceſs of *Sheriffs*, *Juſtices*, *Conſtables*, or others, in their legal courſe for the Publick Peace. Yea, inſomuch that if I ſhould have beaten a Drum, or raiſed Forces to reſcue King *Henry* the Eighth from the *Compter*, for abuſing a *Petty Watch* in a Night-walk; I might have been arraigned for it.

And ſo I might have been, for refuſing to fire the *Beacons*, or to have raiſed the *Counties*, if I had ſeen a Navie of *French* or *Turks* landing in King *John*'s time: Although the King had come to me and bid me quiet, becauſe they were *Friends*, or ſuch as he invited in for the good of his Kingdom. Which from his own Mouth, or under his hand, would have been no legal *Superſedeas* to a private man, in caſe of ſuch Danger; much leſs to a *Sheriff*, or other ſworn Officer.

For in ſuch caſes of Apparent Danger, any man that is next, may eſteem himſelf an Officer; as, in quenching great Fires, or damming out the Sea. And in ſuch, though the King himſelf ſhould forbid me, or get me indicted; I may demur, and put my ſelf on the Judges of Law; eſpecially Parliament, the moſt proper Judges in ſuch Cauſes. And to Lawyers I need not cite Records or Precedents.

Nor ſhall I need to adde, That in caſe of *Foreign Invaſion*, or Inteſtine Motions, and Breaches of Publick Peace, the Common known Laws of the Land will warrant a *Sheriff*, *Officer*, or private man, to go over a Pale, an Hedge, a Ditch, or other Bound of a Shire or County.

County. In which our Ancestors were not so ceremonious or superstitious, in case of hot Pursuit, or the like: Although they were punctual enough in keeping of *Land-marks*: And in Peace, in cases of real Actions, and personal Trials. They were very tender of those Marks, in special, that bounded out *Shires* or *Counties*.

The Original of Shires and Sheriffs, is generally fixed upon King *Alfred*. But the old Abbot of *Crowland* (whence this arose) seemeth to speak of new *Names*, rather than Things: for himself hath *Provincias*, *Comites*, *Vice Domini* (though not *Vice Comites*) of Ages before King *Alfred*. And the Monk of *Malmsbury* durst not follow *Ingulph* in this of Shires, as he doth in *Hundreds*; which yet (as *Wapentakes*) were elder much, if we may credit *Tacitus*.

Old *Ethelward*, and the Author of both the *Offa's*; with *Huntingdon*, among Historians; and the Lawyers old *Horn-book*, the *Mirrour*; do find or make *Counties* and *Counts*, before King *Alfred*. And we may go higher much, if we may trust to *Alfreds Saxon Bede*, now printed, with an old *Saxon Chronologie*, by Mr. *Wheelock*. In both which we read so much of *Eorl*, *Eolderman*, *Shire-Alderman*, and *Bishops-shire* (besides *Shireborn*) that is, his *Parish*: For this was the old Diocess, before the Novel Division of *Parishes*.

And before *Alfred*, as high as King *Ina*. His Laws, now extant, tell us of *Shire-men* that were *Judges* also,

(as the old *Counts* and *Shireeves*) and of *Eadmund* that were to forfeit their Shires, if they let *Thieves* escape.

I might add the old *Writs of Assize* in St. *Eadmund's* time; on which the great Judge buildeth (in two or three Books of *Reports*) for *Sheriffs*, *Tryal* by Twelve, and other things; which might have other clearer Proofs.

If any would also assert such Division among the old *Britains*, he might have much from *Nature*, in Rivers or such Partitions, to most of our *Shires*; besides the names in *Cæsar*, *Tacitus*, *Strabo*, *Ptolomy*, and besides that, which *Virgil* himself will admit of, *Molmutius* Laws; assigning the *Ways* and *Plows* for every *County*, which is in others; besides *Monmouth* or *Kimmimus*: For *Polydore* addeth in this, which is to be marked; besides St. *Edward's* Laws.

This Digression may be the more tolerable, as that which maketh way to such Elections; as we might assert in the Parliaments of those times also, were this the proper place.

But to return to the *Militia*. We have found it moulded by *Common Consent*; and by it also committed to *Shireeves* and other Officers, known, sworn, and *chosen by the People*. We shall now step a little higher, that we may see how in elder times the great work of *War*, as well as *Peace*, was managed. And this also we shall find entrusted to a *Common Council*.

I do not deny, but the King himself hath sometimes been General of a great Army; and that legally also: for it was by Consent of the People or Parliament.

So it was when the *Romans* came into this Island, *Cassibelan* was King and chief Commander in War: But it was by Consent of a great *Common Council*; as *Cæsar* himself observeth and reporteth: *Summa belli Communi Concilio, Cassibelano traditur.*

Nor can it be wondered at, when their *Druyds* grand Maxime of State was this: *Ne loqui de Republica, nisi per Concilium.* Not so much as to speak of a matter of State, but in or by a Council.

These were they that sent *Cæsar* word, they had as good Blood as he; and from the same Fountain: having been so long acquainted with *Liberty*, that they knew not the meaning of *Tribute* or *Slavery*.

The *British Druyds* moulded the *Gauls*: *Cæsar* reporteth it, with the Brag of one of them, saying, *That he could call or appeal to such a great Common Council, that all the World could not resist it.*

But there were others also, besides *Kings*, chosen by the *Britains* to be *Generals*; such as old Authors call *Principes Militiæ*: a Phrase given to divers; two I remember, *Bolinus* and *Levisham* (as now he might be called) in the time of *Kimbolinus*: acting by Common Council, as all may find that read those Histories. Which we may now assert, by better Authors than old *Monmouth*, though he be better also; much better than *Polydore* or others would perswade us.

It

It was this *great Council*, with the *King*, that treated with and againſt the *Romans* in all times; and that ſought their aid at length againſt the *Picts* and *Scots*. And when the *Romans* could not attend the *Britains Tears*, it was this *Council* that called in their Neighbours firſt, and Friends the *Britains* from *Armorica*; (the *Gauliſh Britain*) and that before King *Arthur*'s time: Of which ſo many Authors write, that *Convocato Clero*, and *Primatibus Communi tandem aſſenſu mittuntur in Armoricam Nuncii, &c.* A Parliament clear enough; yet not ſo clear; as any man acquainted with thoſe times, might prove beyond diſpute. But I now muſt attend the *Militia*.

A Parliament it was that called in the *Saxons*; not the King alone, but Parliament, of *Lords* and *Commons* alſo; if (beſides the Crowd of all in the Road) I be not deceived by the *Saxon Chronologie*; and *Gildas* himſelf, (whoſe very words almoſt are uſed by *Monmouth* and others;) and by the famous *Nennius* of *Bangor*, who yet liveth in *Manuſcript*.

He is clear enough for divers things we doubt in *Britiſh Stories*: And for Parliaments alſo, before the *Saxons* ſetling here; which was by *Act of Parliament*. *Dum Conventa magna Synodus Clericorum & Laicorum, in uno conſilio & cum majoribus natu Conſilium fecerunt, & ſcrutati ſunt quid facerent; tandem Concilium omnibus fuit, ut pacem facerent: poſtea verò Conventum adduxerunt*, (here was a *Covenant* alſo by *Parliament*) &

& Statutum eſt, ut amicitia firma adjuvicemeſſet, &c. Thus *Nennius*, after his eſcape from the *Maſſacre* at *Bangor*.

Come we now to the *Saxons*, ſetled here by *Parliament*. In this they may ſeem more conſiderable, that by moſt they are made the Patrons of *Chivalry*, or *Tenures by Knights-ſervice*: for it is now believ'd by no Lawyer or Hiſtorian, (that I know) that this came in with the *Normans*; although it was ſo thought by ſome.

I have ſomewhat to ſay in due place, why it might look higher than the *Saxons*; yet I muſt yield, it had been but little room among the *Britains* of *Gavel-kind*. Of which, the Parliament in *Henry* the Eighth; and more hereafter: beſides all the Comments upon the Statute (or rather the *Writ*) *de Militibus*.

None doubt but *Tacitus* ſpeaketh of our *Saxon* Anceſtors (or rather *theirs*) in that, in *their choſing Kings* and *Generals*, (*Reges ex nobilitate, Duces ex virtute*) *by Common Council, in iiſdem conciliis, Eliguntur & Principes, de Minoribus Principes, de Majoribus, omnes conſultant.* And that ſuch Council did both mould and manage the *Militia*, is plain enough in the ſame Author: Who beſides all matters of Hiſtory, telleth us their general Cuſtom was; *Not to entruſt any man with bearing Arms, antequam Civitas ſuffecturum probaverit, till ſome Common Council, more or leſs, had approved him.* For ſo, I may tranſlate it to all that know, how much *Urbs* and *Civitas* do differ. The

The Tract of *Parliaments* is visible enough in all the *Saxon Writings here.* I should be tedious in citing but one quarter of that which their Laws (yet to be found, and very good Authors) do afford in this.

Some have much wondred at a Passage now found in the *Confessors Laws.* It is about *Tithes*, which he saith, were preached by *Austin, and granted by the King* (then reigning) *and the Barons, and common People. Concessa sunt à Rege, Baronibus, & Populo.* A very full and clear Parliament.

We need not suspect or doubt it: for in those very times there were such Parliaments, and such degrees! Nay, *Cæsar* himself found such *degrees* among the *Britains*; a *King* and *Druyds*, (which were as *Bishops* and *Archbishops*, as we may clear anon) *Dukes* and *Nobles*, besides the *Commons*: So civil was our *British Ancestors.* Of whom, much more ere long.

And for the very first times of Christian Religion (which was much higher than *Austin* the *Father*, who might have been great Grandfather to *Austin* the Monk) King *Alfred*'s own Laws acknowledge, that in this Island the Laws were then made by a *Common Council of Bishops and other Wise men, or elder men of the Wytan.*

Old *Bede* seemeth plain enough for this, in several places; *Servabant Reges, Sacerdotes, Privati* (Were the Commons before the Lords?) *& Optimates, suum quique Ordinem.*

And

And of the *Saxons*, called in by Common Council, *Initum est Concilium, quid agendum, &c. placuitque omnibus, cum suo Rege Vortigorno, ut Saxonum gentem in auxilium vocarent.*

And of *Ethelbert* (King of all the South to the River *Humber*;) *Among other good works* (saith he) *quæ consulendo conferebat, etiam decreta Judiciorum juxta exempla Romanorum, Concilio Sapientium constituit.*

And among other Laws of his (in the same *Bede*) that is one, in special, for Priviledge, *Ecclesiæ, Episcopi, & Reliquorum ordinum.*

That this might also extend to the great *Priviledge of Parliaments*, I could the rather believe, from the Laws of the said King *Ethelbert*, yet to be found in the old book of *Rochester* (*Textus Roffensis*) of which, Sir *Henry Spelman*; unto whom we owe so much for all Antiquities. Where, after provision for the things of *God* and the *Church*, (to which St. *Edward*'s Laws allude) the next Act is for *Priviledge of Parliament*, it seems; being for the punishing and sore fining of those that should do any damage, *Gif Kyning his Leode to him gehateth*, &c.

And in the old Chronicle of *Canterbury*, we read of this King *Ethelbert* being at *Canterbury* with his Queen and Son, and the Archbishop *Austin*; *Cæterisque Optimatibus, convocato ibidem Communi Concilio tam Cleri, quàm Populi:* With divers other proofs for Parliaments in Charters to that Church, in print. And *Spot* deserves as much.

One thing I muſt not omit, that *Bede* (obſerving how Religion was preached both to the King and to the *Counts, omnibus Comitibus*) ſaith, there was a *Licenſe* granted for publick *Preaching*; but when the King and divers great men were converted and baptized, yet there was no force uſed to compel others to be of that Religion: becauſe (he ſaith) they were taught, that *Chriſts ſervice muſt be voluntary, and not forced.* But the *Mirrour* telleth us, the King was bound *to compel men to Salvation.* O happy men! or unhappy King!

But the *Britains* would not be forced from their Rites by *Auſtin* the Monk, *Abſque ſuæ gentis, & imprimis Senatorum ſuffragio:* as a learned man tranſlates King *Alfred*'s *Saxon Bede.* Which is alſo very clear in ſeveral places, for ſetling of Chriſtian Religion, (when it was freely choſen) with deſtruction of Pagan Idolatry: with *Lent*, and other things, confirmed by divers Acts of Parliament in time of *Ercombert* and King *Edwin*; *Mid his Witum, & mid his Ealdormanum.*

So is the old Book of *Peterburgh*, for a Parliament or *Heatfield.* With which we may compare ſomewhat in *Ingulph*, and more in *Bede*, *Ethelward*, and *Huntingdon*, about the Parliaments which received and confirmed the *General Councils*; and that which eſtabliſhed the Diviſion of *Pariſhes*, and *Patronage* of *Churches.* Of which, *Stow*, and the Antiquities of *Canterbury*; but eſpecially a Manuſcript in *Camdridge*, cited by Mr. *Wheelock* on the fourth or fifth of *Bede.*

I ſhould not digreſs to *Sigesberts* founding the *Univerſity* of *Cambridge*, had not King *Alfred* himſelf in this, added good Notes to *Bede*. By which we may ſee whence he learned what ſo many ſay he did to *Oxford*, the younger Siſter: For which *Polydore* is plain enough; beſides ſo many better elder Authors. It is alſo conſiderable, that King *Alfred* calleth *Cambridge* (or *Grantaceſtre*) a *City*; which *Bede* would make a *Civitatula*. How little it might then be made by the *Danes* or others, I know not: But in old *Nennius* of the Britiſh Cities, I find *Cair Granth* next before *Cair Londen*. And Sir *Simon d' Ewes* affirmeth it to be ranked before *London*, in *Gildas Albanius*, and an old *Saxon Anonymus*; beſides that of the old (but not the oldeſt) book of *Doomſday*.

Nor muſt I omit the *Records of Richard the Firſt*, for the Cuſtoms of the *City of Cambridge*, found by a Jury in an Aſſize of *Darrein Preſentment* for the Church of St. *Peters* in *Cambridge*. Of which, the great Judge in his Reports or Commentaries

To which I might adde what the *Saxon* Chronology ſpeaketh of *Grante Briege*, at the year 875, and 921; where we alſo find an ancient *Military Sacrament*, or great Oath of *Fealty*: more to be marked, than may ſeem at firſt view.

Come we to the *Saxon* Laws, *extant* in print. They begin with King *Ina*; whom ſome will have to be a *Britain*. But in the *Confeſſors Acts*, he is ſtiled

Optimus Rex Anglorum, qui electus fuit in Regem per Angelum, & qui primum obtinuit Monarchium Totius Regni hujus, post adventum Angliorum: And that himſelf and others of his People, matched with the *Britains*. But *per Communæ Concilium & aſſenſum omnium Epiſcoporum, & Principum, Comitum, & omnium Sapientum, Seniorum & Populorum totius Regni.*

Not onely a clear proof for *Parliaments* in King *Ina*'s time, but a good Comment on his Laws in print: Providing about *Matches*, *Dowries*, and *Women's Thirds*; and all by Parliament: as the Proem it ſelf expreſſes: beſide King *Edward*'s Laws.

And for the *Saxon Militia*, (a Phraſe uſed by *Bede* himſelf; *Nam egreſſi contra Geviſſorum gentem, omnes pariter cum ſuâ Militia corruerunt:*) King *Ina*'s Laws afford us divers Acts of Parliament, providing againſt Thieves, Riots, Routs, and all unlawful Aſſemblies, in ſeveral degrees and branches: As alſo for Officers of the *Militia* (to be ready on a great Fine) to march upon all juſt occaſions. With which we may compare Mr. *Lambert*'s *Cuſtos Paganus*, *Sithecundman*: which ſome would have to be the Father to our *Sidemen*. See *Whithred*'s *Military Dooms*.

Egbert is by all eſteemed a great, if not the firſt *Monarch* of the *Saxons*; a great Warriour, and a Conquerour: But yet he neither made or managed the *Militia*, without a great Common Council or Parliament.

For

For which, beſides all others, we have a clear proof in the old Abbot of *Croyland*; to which there was a great Charter confirmed, *Coram Pontificibus, & Proceribus, Majoribus totius Angliæ:* which were all together at *London, conſulting how to provide againſt the Daniſh Pirates: Pro Concilio capiendo, contra Danicos Piratas*, &c.

That alſo *Majores* in this place, might denote ſome lower than *Earls* or *Lords*, may not onely be gathered from the Subſcriptions to that Charter, but from *Bede*, or other old Authors that uſe the Phraſe *Majores*, of ſuch Officers or Magiſtrates as *Mayors* in Cities now ſeem to be. Of which, I might give divers Examples.

It is worth obſerving, how in theſe *Daniſh* ſtorms, all Hiſtorians make the *Counts*, or great *Shireeves*, to be Generals or Commanders of the *Militia*. And of theſe, I know none more famous than *Dorſetſhire Reeve Ethelhem*, in the great Battel of *Hampton*, or in that about *Port* (of which ſo many write) at the *Danes* firſt landing thereabouts.

Danigeld is ſcarce ſo ancient: Yet this alſo was granted for proviſion againſt *Daniſh Pirates*; as St. *Edward*'s Laws affirm. Who firſt remitted this Tax (but it came up again) about forty years after it had been diverted from its firſt inſtitution; and paid as *Tribute to the Danes*. But this was alſo by Parliament. Of which, *Ingulph* and *Hoveden*, with all about *Ethelred* and *Edward*.

I must not digress to the Parliament of *Winchester*, (in King *Egbert*'s Sons) in which *Tenths* of Lands (as other *Tythes*) were confirmed for *Church-Glebe*. Of which the *Saxon Chronologie*, with *Ethelward*, *Hoveden*, the Abbot of *Croyland*, the Monk of *Malmsbury*, and *Matthew* of *Westminster*, with divers others, before *Polydore*. To which we may adde King *Edgar*'s Oration to St. *Dunstan*; which is known enough. As also the *Wednesday Masses*, one for the King, and the other *pro Ducibus*, &c. *Consentientibus:* The Charter being subscribed by the King, Archbishops, Dukes, Earls, and *Procerum totius Terræ*, *Aliorumque fidelium infinita Multitudine.*

I should not omit the Parliaments confirming *Rome-Scot*; much mistaken by divers. It was granted by King *Ina*, then by *Offa*, and again, by King *Ethelwoolf*; not to the *Pope*, (as it is generally thought) but to the *English School*, or *Alms-house for Pilgrims* at *Rome*. Yet it was called *Peter-pence*, because fixed on *Peters-day:* A famous day in our Law, as may appear by the second of *Westminster*, and other Parliaments.

But it might be called *Peter-pence* from King *Ina*, whom (at his Baptism in *Rome*) the *Pope* name *Peter*; as the Saxon Chronicles; others. Or there might be as much reason for *Peter-pence*, as there was for *Peterburg* (which was *Medhamsted*;) but Vows might be performed or absolved here, as well as at St. *Peter*'s Threshold in *Rome:* And hence the name of *Peterburg*.

But

But of *Peter-pence*, before *Polydore*, we read in much older Hiſtorians; eſpecially the Author of King *Offa's Life*, now printed with *Matthew Paris*: Beſide the Laws of King *Edgar*, *Canutus*, *Edmund*, and the *Confeſſor*; where it is called *Eleemoſynæ Regis*: But in the Saxon Chronology, 'tis *Kynninges and Weſt Seaxena Almeſſan*: And in King *Alfred's* Life, (by *Aſſer Menevenſis*) *Eleemoſynæ Regis*, and *Anglo-Saxonum*: Being confirmed by common Aſſent, or Parliament.

I muſt omit the Parliament at *Kingsbury*; where among other divers matters, a great Charter was confirmed to *Crowland*: *Unanimi Conſenſu totius Concilii, pro Regni Negotiis Congregati*: Subſcribed by the King of *Mercia*, Archbiſhops, Biſhops, Earls, *&c.* And among others, by *Offlat*, who was *Pincerna Regis Ethelwoolphi*, *& Legatus Ipſius*, *& filiorum, Nomine Illorum, & Omnium Weſt-Saxonum*; as we are told by the old *Abbot*, who knew it well.

I might paſs over King *Alfred's* Parliaments: ſo the famous in all Hiſtorians and Lawyers. But in none I know clearer, than in the old *Mirrour*. Of which, before, for *Alfred* and his Parliaments, twice every year in *London*. With which we may compare one paſſage in the *Confeſſors Laws*, touching this great and *old City*. But of this, hereafter.

This was the learned King, who peruſed all the old *Trojan*, *Grecian*, *Britiſh*, *Molmutian*, *Mercian*, *Daniſh*, and *Saxon* Laws; eſpecially thoſe of *Ina*, *Offa*, and King

King *Ethelbert*: *Cum conſulto Sapientum, partim innovanda curavit*, as himſelf ſpeaketh. And his Laws were eſtabliſhed by Parliaments, by his Witan, or *Witena*: *Atque eis omnibus placuit, edicti eorum Obſervatione*; As learned *Lambert* tranſlateth the Saxon.

But I may not omit King *Alfred's Doomſday-book*, made by ſuch *Common Council*, the *great Roll of Winchester*; which was again renewed by the *Confeſſor*, and then again by King *William the First*; and then alſo called the Roll of *Winchester*, and *Doomſday*, as before. Of which, old *Ingulph*, with *Natura Brevium*.

Yet it ſeemeth, that before King *Alfred's* time, there was ſuch a *Doom-book* made by *Ethelwoolf* (at the time of the *Church-Glebe*;) of which Book, the Saxon Chronology, at the year 854. But this might rather be a Land-book (whence the Phraſe of *Booeland*.) See King *Alfred's Will*, annexed to *Aſſer*. But we alſo find an ancient *Doom-book* for their Laws and matters *Judicial*.

Of which *Doom-book* we read in ſeveral places of the Laws of *Edward the Senior*; ſtrictly charging all the Judges and Magiſtrates to be juſt and equitable: *Nec quicquam formident, quin jus Communæ audacter, libereque dicant*: according to the *Doom-book*. And again, in *Edgar's* Laws, we find the *Doom-book* for Tythes, and the famous *Kyricſeat*.

Theſe ſucceeded King *Alfred*. But long before his time, among the *Dooms* of *Withred*, made about the year

year 697. by the King and Bishops, *Cum ceteris Ordinibus*, and Military-men (or *Milites*) at *Berghamsted*; a Fine is set upon a Commander found in Adultery, *Spretâ Sententiâ Regis, Episcopi, & Proceres Doom.*

I could believe King *Ethelbert*'s Parliaments were Authors to this *Doom-book*. Of which, the *Roll of Rochester*, *tha Doomas dhe Athelbirth Cyning*; with *Rihtra Dooma* (in the fore-cited place of *Ethelbert*) in the Saxon *Bede* of King *Alfred*.

How severe *his Dooms* were to the *Counts*, old *Shireeves* and *Judges*, we find in *Asser*: more in *Horn*, and his *Kirk-dooms* in his Laws; which do also speak of *Kiric-Ealdor*, a *Church-Elder*.

But again to the Saxon *Militia*. In *Alfred*'s time there was a League made with the *Danes*: Then the Title was, *Fœdus quod Aluredus & Guthrunus Regis ferierunt, ex Sapientum Anglorum consulto*; confirmed by Act of Parliament. And the Saxon Chronologer addeth, That the *Dane* swore to the Peace, and promised to be baptized; as he also was, and King *Alfred* was his Godfather, naming him *Ethelstane*. Some adde, a Daughter of King *Alfred*'s for his Wife: which may be worth enquiring, more than now may seem.

The Articles of this League were again renewed and enlarged by Parliament, in *Edward* the *Elder*: *A Sapientibus recitata sapius, atque ad Communem Regni Utilitatem, Aucta atque Amplificata.* In the Preface to those Statutes.

In this *Edward's* Reign, there was an Inſurrection; and *Ethelwald* ſeized on *Winborn*, &c. whoſe Charge and Crimes was this: That he did ſuch an Act, without permiſſion of the *King* and *Parliament*; *but an tdes Kynings, leafe ac his Witena.* So the *Saxon.* And *Malmsbury* addeth, That *à Proceribus in Exilium truſus, Piratus adduxerat.*

But the King ſummons a Parliament at *Exon*; and there, *Mid his Witan*, conſulted how the Kingdoms Peace might be reſtored and preſerved: *Orabat vehementer, & obteſtabatur*, (ſuch was his Mean to the Parliament) *hoc unum Curent, ne quem injuriâ afficiant:* Beſeeching them mainly to mind this, That they wronged none. A moſt pious Chriſtian Motion! And our Monthly *County-Courts* are as old as this Parliament at *Exon.* The Acts are printed. But I muſt not digreſs to their *Ordeals*, appointed there for *Perjury.*

In this Kings Reign the Pope ſent his Bull to excommunicate the King and all his Subjects: For that, *Per 7 annos deſtituta fuerat Epiſcopis, omnis Regio Gaviſorum, id eſt, Weſt-Saxonum.* Whereupon the King ſummoned a Parliament; *Convocavit Synodum Senatorum Gentis Anglorum:* As ſaith the Monk of *Malmsbury.* *Et Eligerunt & conſtituerunt Singulos Epiſcopos, Singulis Provinciis Gaviſorum:* (For the *Biſhops Shire* uſed to be equal to the *Earls*, or the *Ealdormens Shire*, with whom he ſate in *Folkmoote.*) *Et quod Olim duo habuerunt, in quinque diviſerunt.*

King

King *Ethelſtane* came next. He was the firſt of all the Engliſh Kings that ruled over all the Iſland, conquering *Wales*, and regaining *Scotland*: Which being ſubject to *England*, as a *Dukedom* thereof, was advanced to a Politick and *Royal Kingdom*: As the learned *Forteſcue* doth plainly affirm. And for this, againſt all that *Buchanan* writeth, I need onely refer to the Authors and Records cited by the great Maſter of Antiquities, with other Learning, Mr. *Selden*, in his ſhort but pithy Notes on it, with *Hengham*: To which we may adde ſomewhat in *Polydore*, and the Saxon Chronology, from the year 924; but eſpecially from *Oſwald's Laws*, and others of the famous *Edgar*, vouching *Ethelſtane* for *Scotland*. Of which we read in many places, beſide the fourth Part of the great *Reports*. But that victorious Monarch ſuffered the *Scot* to reign under him, ſaying, That it was more *glorious to make a King, than to be a King*. A pious Prince, to whom we owe for tranſlating the *Bible* from *Hebrew*; which ſome think he did by ſome Converted Jews.

Among his Laws, now extant, we find divers enacted in *Celebri Gratanleano Concilio*; where there were *Archiep. Optimates, & Sapientes, ab Ethelſtano vocati frequentiſſimi.*

And again at *Exon*, we find him *Mid his Wytan*; and their *Wergylds* for the King, Archbiſhop, Earles, Biſhops, Ealdermen, and other Degrees, may ſuffice to prove them to be Acts of Parliament.

With those several Degrees there mentioned, we may compare the Laws of King *Edgar* and *Canute* in divers places, one of the Ranks of their Nobility, as a *General* or great Commander in *Wars*; which may be observed for the *Militia*.

Edmund succeeded; and at *London* holds a Parliament of Clergy and Laity; (*ge Godcundra, ge Woruldcundra*:) And again, *Mid Witena getheahte gegodra hada gelewedra*. And to the Parliament he giveth solemn *Thanks* for *their Aid in setling the Kingdoms Peace*. His Laws are printed. And we omit his Charter to the Church of *Glastonbury*, which was made, *cum Concilio & Consensu Optimatum*, as we read in *Malmsbury*.

But I must not omit that Parliament of his, recorded in the *Mirrour*; where we find a kind of *Appeal*, or a legal Accusation of Treason brought by *Roceline* against *Walligrat*, *in full Parliament*, in the time of King *Edmund*.

In King *Edred*'s Reign there was a Parliament solemnly *summoned by Writ*, as we read at large in the Abbot of *Crowland*. To which there was then a great Charter confirmed, being drawn or dictated by *Turketulus*, then Abbot, but he had been *Lord Chancellor*. And the date is, in *Festo Nat' B. Mariæ*, *cum Universi Magnates Regni, per Regis Edictum summoniti*; *tam Archiepiscopi, & Episcopi, ac Abbates*, *quam Cæteri totius Regni Proceres, & Optimates, Londoniis Convenissent*;

ad

ad tractandum de Negotiis Publicis totius Regni, in Communi Concilio.

Edgar was a great Monarch, and as great a Conqueror by Sea, as *Ethelſtane* by Land: It might be eaſier to ſhew his four Seas, of which ſo many ſpeak, than to ſet their exact bounds. Yet it may not be unworthy of our thoughts, to conſider, how our Anceſtors did often divide the Office of their *Admirals*, uſually as Nature hath parted our Seas; as thinking it indeed too great an honour and a burthen, for a Subject to be Admiral of all the Seas of ſuch an Iſland. But the late *Cardinal of France* did wiſely (it was thought) diſpoſe, or rather retain, that Office, as the beſt Jewel of that Kingdom; which yet by Sea might yield to this.

But I muſt not digreſs, nor can I determine the bounds of *Edgar*'s Conqueſt, to the *North* (they ſay, to *Norway*) or the *Weſt*. Of which, ſome ſpeak, as if they would but give us hints for farther ſearch and Queries.

I dare not affirm, that in thoſe days our *Saxon* or *Britiſh* Anceſtors did know *America*. But if we may credit any Records beſides the Scriptures, I believe or know it might be ſaid and proved well, that this new World was known, and partly inhabited by *Britains* or by *Saxons* from this Iſland, three or four hundred years before the *Spaniards coming thither*.

Nay, the more I conſider the Diſcourſes which did

paſs

paſs between the *Spaniards* and the *Mexicans*, the more I could believe the *King* himſelf of *Mexico* might poſſibly deſcend from thoſe that went from hence to *Florida*, or rather *Mexico*: So that we need not wonder at the *Britiſh* Words, or Beads, the *Crucifix*, or other Reliques, which the *Spaniards* found at their Arrival. And for this, beſides ſo many other Authors, we have much among the *Britiſh* Annals.

Thoſe in ſpecial left by *Caradoc* of *Lancarvan*, or from him, continued by the *Beirdhs* of *Conwey* and *Stratford*; gathered and tranſlated by the learned *Llhoyd*. To which we may adde what Doctor *Powell* hath of this out of Records, and beſt approved *Britiſh* Authors, in the Life of *Owen Gwyned*, or *David*, and *Madoc*, his Sons, about the Reign of King *Stephen*.

To which, at leaſt for that which concerneth *Hanno*, or the old Navigations (with *Plato*'s *Atlantis*, or what elſe appeareth in *Ariſtotle*, *Theophraſtus*, *Virgil*, *Seneca*, with others) it may not be amiſs to compare two late and very learned French Authors of *Peleg*, and *orbis maritimus*; very worthy (I think) of good peruſal.

But to return to *Edgar*'s Parliaments: How that great Council did often diſpoſe the King himſelf, we muſt diſcourſe in a fitter place. We ſhall now but obſerve, that good Hiſtorians tell us, that King *Edgar*, by the Council of the Kingdom, did repeal the Acts of *Edwin*, both his brother and predeceſſor, *Convocato*

ad

ad Brandanfordeam Regni Concilio, fratris Edwini Acta & decreta reſcindit. And the famous *Oſwald's Law* was ſigned by this King, *Cum conſenſu, Concilio, & aſtipulatione, Archiepiſcoporum, Principum, & Magnatum.* It is printed, and found in ancient Authors.

King *Edgar*'s Charter to *Glaſtonbury* (reciting the Acts of ſo many Kings before him) was confirmed, *Generali aſſenſu Pontificum, Abbatum, & Optimatum:* If we may believe the old Monk. And the Charter is to be read at large: *Archiepiſcopis adhortantibus, conſentiente etiam & annuente Brithelmo Fontanenſi Epiſcopo, cæteriſque Epiſcopis, Abbatibus, & Primatibus.* And the Cloſe is, *Acta hæc, & confirmata, apud Londonium, Communi Concilio, omnium Primatum meorum, &c.* I ſhould be unjuſt to our Laws, if I ſhould omit the Proceſs and Plea of *Morgan Hen*, againſt *Howell Dha*, the good Prince of *Wales*. Upon complaint, they were both ſummoned by King *Edgar*, *Ad curiam ſuam*; and their Pleas were pacately heard, *In Pleno Concilio, & repertum eſt, juſto Judicio curiæ Regis, quod Howell Dha nequiter egiſſet extra Morgan Hen, & filium ſui Huwen, & depulſus eſt Howell Dha ab his duabus Terris* (the Lands then in queſtion) *ſine recuperatione; & Poſtea Rex Edgarus dedit & conceſſit, Hueno Morgan Hen, illas duas Terras, (Iſtradum & Euwias) in Epiſcopatu Landas conſtitutas, ſicuti ſuam Propriam Hereditatem, & illas eaſdem duas Terras ſibi & Heredibus ſuis; Per chartam ſuam ſine Calumpnia alicujus Terreni hominis*

con-

confirmavit, communi noſtro aſſenſu, & teſtimonio omnium Archiepiſcoporum, Epiſcop. Abbatum, Comitum, & Baronum totius Angliæ & Walliæ; factum eſt coram Rege Edgaro, in pleno concilio, &c.

This Record of King *Edgar*, is in *Codicæ Landavenſi*, *fol.* 103. I find it cited by the great Antiquary Sir *Henry Spelman:* and it may be compared with the Monk of *Malmsbury*, and *Matthew* of *Weſtminſter*.

I muſt not relate the Viſions or Predictions of the *Fates* of this Kingdom, which Hiſtorians record about the Reign of King *Edgar*; they are in print, and may be read of all: Beſides the Prophecies of both the *Merlins*; for the *Scottiſh Merlin* was fuller and plainer than the *Britiſh* in *Vortigers* time: That I ſay nothing of *Cadwalladers* Viſion, or *Alans* Council (which was long before the other *Alane* wrote on *Merlin*) or of the famous *Eagle* of *Shaftsbury*, that agreed with others in the *Britains* recovering their Kingdom again, after their grand Viſit at *Rome*, whence they muſt bring *Cadwalladers* bones.

This leadeth me alſo to the *Sybils* Prophecy of three Britiſh Princes that ſhould conquer *Rome*. *Brennus* was one; King *Arthur* ſome make the ſecond; *Et quis fuit alter?* And of theſe *Sybils*, or one of them, ſending a book to King *Bladud*, (ſo famous for the *Bath*, and Greek-Schools, or Univerſity at *Stamford*) the *Scotiſh Merlin* ſeemeth to have written, if among others I miſtake not *Balens*.

But

But of *Edgar*'s Parliaments, one was at *Salisbury*; ſo we read in *Chaucer*, or the old *Fructus Temporum*, by *Julian Notary* at St. *Albans*. And of another of his Parliaments at *Bath*; the Saxon Chronology, at the year 973.

His Laws are now printed; and their Title is, *The Acts of King* Edgar *and his Parliament: Mid his Witena, Getheate gerred*, &c.

Here we find much conſiderable of *Thanes*; which all will have to be *Noble-men*: but it muſt be with them a *Saxon* word. And *Dhenian* is to ſerve: whence the Princes Motto, *Ic Dhæn*. (For ſo it ſhould rather be, than in Dutch, *Ich Dien*.) But why ſhould Noble-men, or thoſe that were the freeſt, have their name from *ſerving*? Here they flie to Knights-ſervice, King-ſervice, or I know not what; moſt proper, as they ſay, to free and Noble-men.

But from a Judge, or *Fleta*, we may be taught, that the Saxon *Dhæn* or *Thæn*, is a Servant; but *Thayn*, a *Free-man*. And in this ſence it ſeemeth to be uſed here. As alſo in *Denmark*, and *Ireland*. Nor did the *Britains* differ much; whoſe *Hæne* or *Hane*, is an *Eldar*: (although *Hyne* be ſometimes uſed for a Servant.) And ſo the Iriſh *Tane* is *Elder*; whence their *Taniſtry* or *Elderſhip*: (the cauſe or ſad occaſion of ſuch bloud-ſhed.) Theſe Britiſh *Hanes*, the Saxons in compliance, called *Ealdermen*: (St. *Edward*'s Laws afford ſo much) and it may be *Thanes*; although with them

they had the name of *Greeves* or *Graves*, suiting well with *Elders*, *Hanes*, or *Senators*. With which we may compare the Phrase of *Seniores*, which we read so oft in *Gildas*, *Nennius*, *Monmouth*, and others of the British and first Saxons times in *Britain*.

I should be tedious in but glancing over the Acts of Parliament in *Edgar's* time. That of the *Standard* at *Winchester* is considerable; and that of one Coyn through all the Kingdom. The *Mirrour* is plain in making it an Act of Parliament, in Saxon times, That no King of this Realm, should *change his Money, or embase, or enhanse it, or make other but of silver; Sans l'assent de tout ses Counties*. Which the Translator is bold to turn, *Without the Assent of the Lords and all the Commons*.

We may not omit the Act against unjust Judges, or Complaints to the King, except Justice could not be had at home. For which also, the *Hundred-Courts* were again confirmed, and the *Grand Folkmootes*, or *Sheriffs Turnes*, established by Act of Parliament. Of which, and of their relation to Peace and War, more in *Edward's* Laws; which may afford a Comment for the Saxon *Militia*.

I need not speak of the Parliament at *Calna*; it is famous enough; where, *Considentibus totius Angliæ Senatoribus*, the Roof fell down, and hurt them most, but St. *Dunston*. Of which, *Wigornensis*, *Jornalensis*, *Malmsbury*, *Matthew* of *Westminster*, and so many others may be cited.

King

King *Ethelred's* Laws have this Title in *Lumbard*: *Sapientum Concilium quod Ethelredus Rex, promovendæ pacis causâ, habuit Wodstoci Merciæ, quæ legibus Anglorum gubernatur: after Ængla-Lage, Post Anglis Lagam*: as an old Author turneth it.

In those Acts, we read of *Ordale Sythan the Gemot mæs æt Bromdune; Post Bromdune Concilium*: It seems a Parliament.

And again, *Jussum ac scitum hoc nostrum, si quis neglexerit, aut profuã quisque virili parte non obierit, ex nostra omnium sententiâ Regi 1000 Dependito.* By which it appeareth to be a Parliament, and not the King only that made those Laws.

That which Sir *Henry Spelman* calleth, *Concilium Æthelmense Generale*, was clearly one of King *Ethelred's* Parliaments; and the very Title is, *De Witena Geredness an, and tha Gerædnessa the Englaræd Witan geeuran, &c.* And divers Chapters begin, *Witena Gerædnesse is*, enacted by Parliament.

And the old Latin Copy of this Parliament, telleth us, that in it were, *Universi Anglorum Optimates Ethelredi Regis Edicto, & convocato Plebis multitudine collectæ Regis Edicto.* A Writ of Summons to all the Lords, and for choice of the *Commons*: a full and clear Parliament.

In this Parliament were divers Acts for the *Militia*, both by *Land* and *Sea*; (as most Parliaments after King *Edgar*:) and among others, for Castles, Forts,

 Cities,

Cities, Bridges, and time of the *Fleets* ſetting out to Sea. It is made *Treaſon* for any to deſtroy *a Ship that was provided for the State-ſervice*; *Navem in Reipublicæ expeditionem deſignatam*: as a learned man tranſlateth the Saxon.

And no Souldier muſt depart without leave, on forfeit of all his Eſtate. None may oppoſe the Laws, but his Head, or a grievous Mulct (according to the Offences quality) muſt recompence.

It was here alſo enacted, That *Efferatur conſilium quod Populo habeatur utiliſſimum.* And again, *In rem totius Patriæ.* And that each ſhould do, as he would be done to: Which it calleth, the *Moſt right Law.* And that the higher and greater men the Delinquents were, by ſo much the more and heavier they ſhould be puniſhed. Of which, and of their *Wergylds*, for all Ranks of men.

Again, *Iniqua omnia, & injuſta, quæ Rex unà cum Optimatibus, exterminare decreverit, abjiciantur*, &c.

That about this time, *Danegeld* came to be paid to the *Danes*, (which was before againſt them) is agreed by all. *Malmsbury* is bold to aſcribe it to a Decree of the *Archbiſhop* of *Canterbury*; but *Huntingdon* may be his Comment, telling us, That *Conſilio infauſti Siricii Archiepiſcopi*, *Edelredi* 13. *primum Statuerunt Angli, quod ipſi Cenſum Dacis perſolverent.* A clear Act of Parliament. Of which alſo, *Florence* of *Wygorn.*

And

And again, *Anno* 1007. *Rex & Senatus Anglorum Dubii quid agerent, quid omitterent, communi deliberatione, gravem Conventionem cum exercite fecerunt; & ad pacis obſervationem* 30000 l. *ei dederunt*, &c. This alſo from *Huntingdon*.

And among the Saxon Laws, we read, *Fœdus quod Ethelredus cum exercitu Anlavi*, &c. *ex Sapientum ſuorum Conſilio feriit*. And again, *Pacis fœdus Ethelredo Regi, & omni Populo, Leodſayre*. And again, *Socii ac fœderati noſtri, omnes per Mare & Terras, in Portu, & extra, pace fruuntor*. With divers other Paſſages of Peace and War, ſetled by that Parliament.

Jornalenſis addeth another Parliament in this King's time: *Apud habam, & Conſtituerunt omnes, ut Regi ſuo pareant, ſicut Anteceſſores ſui melius fecerunt, & cum eo Pariter, defendant Regnum*, &c. *& ut cantetur quotidie pro Rege, Communiter & omni Populo ſuo*. And again, *Prohibemus omnem Roboriam*, &c. *& omnis Index Juſtus Miſericordiam & Judicium liberet in omnibus; timeat omnis Judex, ac diligat Judicem ſuum, ne in die Judicii mutus fiat, humiliatus*, &c.

Nor may I forget the famous Judgment for the Biſhop of *Wincheſter*, by the *Thanes* and *Ealdormen*, in the *Witenagemote* (or Parliament) of *Eldred*: *Quo dum Duces, Principes, Satrapæ, Rhetores, & Cauſidici, ex omni parte confluxerant*. Of which, the old Book of *Ely*, cited by Mr. *Selden* in his *Titles of Honour*.

And

And for the *Militia*, *Roger Hoveden* is very clear and full, at the *Daniſh* Irruptions: *Qua recognitâ, Rex Anglorum Egelredus* (his names are many) *ſuorum Primatum conſilio, & claſſem, & Pedeſtrem congregavit exercitum.* And again, *Habito Concilio cum Regni ſuis Primatibus, utile Duxit à Danis dextras accipere, ſtipendium dare, & placabile tributum ſolvere.* And again, *Primatum ſuorum Concilio, nummos ad Danos, &c.* And again, *Rex & Regni ſui Primates, ad illos* (*Danos*) *miſerunt Legatos, pacem ab iis petentes; ſtipendium & tributum eis Promittentes.*

So is old *Florence* of *Worceſter*: *Conſilio Juſſuque Regis Anglorum Æthelredi, procerumque ſuorum, de tota Angliæ robuſtiores, Lundoniæ, congregatæ ſunt naves.* And again, *Procerum ſuorum conſilio, ad eos* (*Danos*) *Legatos miſit, promittens tributum & ſtipendium.* And again, *Omnes Angliæ Primates utriuſque Ordinis ante Paſcha Lundoniæ congregati ſunt, & ibi tamdiu morati ſunt, quouſque tributum Danis Promiſſum, quod erat* 48000 l. *Perſolveretur.* And again, *Cum apud Onomfordam magnum haberetur placitum, & eodem tempore Cnutus cum magna claſſe, &c. Eadmundus Clito magnum congregavit exercitum, &c.*

So is *Matthew of Weſtminſter*; adding much to thoſe before him, and aſcribing that bloudy Council of the *Daniſh Maſſacre* to one *Huna*, *Princeps Militiæ, qui ſub Rege, Regni negotia diſponenda ſuſceperat*; cujus *conſilio, miſit litteras Rex in omnes Regni fines, Mandans*

natio-

nationibus ſingulis & univerſis, &c. Of which, St. *Edward's* Laws. But *Oxonienſe placitum*, is in *Floriſegio: Magnum apud Oxoniam colloquium Anglorum pariter & Danorum.* And ſo the old Gloſſary of *Canterbury* renders *Gemot* by *Placitum*; and *Folcgemot*, by *Populi Placita.* So alſo, *Law-Motes*, are *Placita*: *Magnum placitum*, the great *Folc-mote*, or Parliament; as *Comitatus placita*, with *Matth. Paris*, County-Courts: *pareæ placita*, Oxford *Parvises.*

I muſt not ſtay long on the Acts of Parliament which *Angles Kynnes Witena* made and eſtabliſhed, *Cum Walliæ Conſiliariis de Monticolis*: Where, among other things, we find it enacted, That *Viri duo denijure conſulti, Angli ſex, Walliqne totidem, Anglis ac Wallis jus dicunto.* With which we might compare our Laws, *de Medietate Linguæ*, &c.

But for our Trials by a Jury of Twelve, we have a much clearer Law in another Parliament of *Ethelred*; *Frequenti apud Wanalingum Senatu.* Of which, *Fornalenſis*, and Mr. *Lambards Gloſſary. In ſingulis Centuriis Comitia ſunto, atque Liberæ conditionis viri duodeni, ætate Superiores, una cum præpoſito, ſacra Tenentes Jurante, ſe adeo virum aliquem Innocentem haud Damnaturos Sontemve abſoluturos.* An old MSS. thus: *Habeantur placita in Singulis Wapentakis, ut exeant Seniores* XII. *Thani, & præpoſitus cum eis, & Jurent ſuper Sanctuarium, quod eis dabitur in Manus, quod Neminem Innocentem velint accuſare, vel Noxium Concelare.* But of more

more ancient Tryals by Twelve, in fitter place: although I muſt not ſpend time to confute the *Italian*, who will have that *terrible Cuſtom* (as he thought) *brought in by the Conqueror.*

The Proofs of Parliaments in *Canutes* time, are ſo many, and ſo full, that they tire us altogether. How he confirmed the Laws of *Ethelred* and other Predeceſſors, we read in the Monk of *Malmsbury*, who recordeth alſo his remarkable Letter from *Rome*, directed to the *Archbiſhops*, *Biſhops*, &c. *Primatibus, & Toti Genti Anglorum, tam Nobilibus quam Plebeis.* As alſo his Charter to *Glaſtonbury*: *Cum Concilio & Decreto Archipreſulis Edelnothi, ſimulque Cunctorum Dei Sacerdotum, & Conſenſu Optimatum.* *Hoveden* in full, in this alſo. *Cujus (Edmundi) poſt Mortem, Rex Canutus omnes Epiſcopos, & Duces, necnon & Principes cunctoſque Optimates Gentis Angliæ, Lundoniæ Congregari Juſſit.* A clear *Summons* of Parliament.

And the very name of Parliament, is found of his time, in the old book of *Edmunds-bury*: *Rex Canutus anno Regni quinto*, &c. *Cunctos Regni ſui Prælatos, Procereſque, ac Magnates, ad ſuum convocans Parliamentum.* And again, *In ſuo Publico Parliamento.* And that it was indeed a *full Parliament*, we may believe from the perſons we find there at the Charter of that Monaſtery, confirmed by *Hardi-Canute*; but granted by *Canute, in ſuo Publico Parliamento, præſiſtentibus perſonaliter in eodem Archiepiſcop. Epiſcopis, Suffragenis, Ducibus,*

Ducibus, Comitibus, Abbatibus, cum quam plurimis gregariis Militibus, (Knights of Shires, it seems), *& cum Populi Multitudine Copiosa* (other Commons also) *omnibus tum in eodem Parliamento personaliter Existentibus.* And the Title of these Acts is, *Statuta Canuti, Regis Angl. Dan. Norw. venerando Sapientum ejus Concilio, ad Laudem & Gloriam Dei, & sui Regalitatem*, (Reipub. Utilitatem) *& Commune Commodum, habita in S. Nat. D. apud Winton*, &c.

This I find also cited by the great Judge in one part of his *Reports*; but fuller, by Sir *Henry Spelman*.

It would be tedious and superfluous, to cite the Authors that assert, he did confirm King *Edgar*'s Laws in full *Parliament*. For which we might produce some better, or at least much older, than good *Bale*, or *Grafton*.

Many of his Acts of Parliament are printed: *Consultum quod Canut. Angl. Dan. Norw. Rex Sapientum Concilio Wintoniæ Sancivit.* Here *Allegiance* or *Fealty* setled by Parliament, and afterwards, *Præcipimus uniuscujusque Ordinis singuli, Muneris atque Officii sui Religionem Diligenter, cauteque teneant.* And among other Encouragements to *Chastity*, this is one, That such chast men of God should enjoy the same Rights or Priviledges with *Thanes*: (and *Ethelstane*'s Laws do equal *Priests* with *Thanes*) But there are two or three degrees of *Thanes* in these Laws about the *Hereots*: for the *Eorles* and *Thanes*, &c. much to be marked, as per-

taining to the *Militia.* For which, and for all *Canutes* Laws, the old MSS. *Huntingdon*, is worth perusal.

Again, we find other Statutes, *Civil* or *Politick*, *Sapientum adhibito Consilio, Mid, Minan Witenan ræde, that Man heald ofer eall Englaland.*

With provision against Thieves, Robbers, for the Peace, Hue and Cry, *&c.* There are Statutes also for repair of *Burgs* and *Bridges* : *Scyrforhunga, præsidii fiat apparatus Terrestis ac Maritimus, quoties ejus Muneris Necessitas Reipublicæ obvenerit.*

And presently after, *Quæ ad Reipublicæ pertinent Utilitatem.* Among the Crown-Prerogatives, *Violata Pacis & Divitatæ Militiæ Mulcta.*

Sheriffs Turns, Hundreds, and Tythings, are here confirmed; and the twelve-year-old *Fealty*, with views of Frank-pledge. But this Oath was to the *Kingdom*, rather than to the King: *Fidem det omni se in posterum ætate, tum Furti, tum Furti Societate & Conscientiâ temperaturum.*

Again, of passing *Ordeals*, *Sythan tha Gemot wæs on Winceaster*; since the Parliament at *Winchester* (this being at *Oxford*:) and after, *Jussum vero ac Placitum hoc Nostrum, si Præpositorum aliquis incuriâ omiserit, aut exequi aspernabitur, ex Nostrâ Omnium Sententia, Regi* 120 s. *Dependito.* A clear Parliament.

Si quis alium injuste, armis spoliavit, eam quæ est loco Colli obstricti, Mulctam Dependito Healsfange. It is also in the same Laws, the punishment of false Witnesses.

Some

Some think it the *Pillory*, some worse; as the Original of that Proverbial Letany, *From Hell, and from Halefax.* See K. *Hen.* Laws, and *Helfang.*

Si quis in Militia (perfectione Militari) pacem violaverit, vita, vel Weregild Mulctator: si quid rapuerit, pro facti Ratione, compensato.

Si quis Pensionem ad oppida, pontesve reficiendos denegarit, Militiamve subterfugerit, dato is Regi 120 s.

Again, in those Statutes, *The King must live upon his own Feormians* (or *Farms*; which in Saxon, *afford all needful for man:*) *and none may be compelled to give him any Maintenance: That the Folk be not burthened.* It is the 67th Chapter.

Loss of Dower or Joynture to Widows marrying within twelve months, might seem hard; but so long she need not pay any *Heriot.* And the same Laws free the Wife from her Husbands *Theft*, although found with her; except it be lockt in her *Hord, Chest*, or *Tyge*, (*Dispensæ, arctæ, & Sermii*). Of which that Law giveth her leave to keep the *Keys.* But *Ina's* Laws are hard, concerning Children.

Again, for the *Militia*, *He that in Sea or Land-fight, leaveth his Lord or Comrague, (& Eclago) must die as a Traytor; his Bootland to the King, other Land and Estate, to his Lord. But of him that dieth fighting with his Lord, without any Heriot, (the Heirs may enter, and* Scyftan hit swithe righte. Of this *Shift Land*, and *Gavelkind, Lambard in Terra & Scripto*, Perambulation

 of

of *Kent*, and *Spot* of *Canterbury*; beſides ſeveral Acts of Parliament, in *Edw.* 1. *Edw.* 3. and *Hen.* 8.

If *Celeberrimus ex omni Satrapia Conventus*, (which is there, and by King *Edgar* alſo, to be twice a year, or oftner) be *Parliament*, as ſuch great men have thought; then have we much here alſo for *Power* and *Priviledge* of *Parliament*. Nay, more indeed, if it were but the Grand *Folemoot* or *Sheriffs Turn*, ſo much below a *Parliament*.

He that in ſuch a Grand Moot had defended and maintained his Right and Plea to any Land, is there ſetled without diſpute, for his life, and his Heirs, or Aſſigns, as his *Will* ſhould diſpoſe: Chapter 76.

And again, for *Priviledge of Parliament* (or yet lower) *Sive quis ad Comitia profiſcatur, ſive revertatur, ab eiſdem, (from Gemote, or to Gemote) placidiſſima pace fruitur, niſi quidem furti fuerit manifeſtus. Theof*, *Thievery*, founded more with them, than now with us. For their *twelve-year-Oath* (of which before) at Frankpledge, was onely againſt *Theof*; which yet ſeemeth to intend *all above it*: for what forbiddeth the *leſs*, forbiddeth the *greater* much more.

One thing more I may obſerve; through all theſe and other old Laws, there is ſtill ſo much *Religion* and plain-hearted Simplicity, with Piety, expreſſed, that it ſhews our Anceſtors had not yet learned to be aſhamed of *their God*, or of looking towards *Heaven*.

I have been the longer in theſe, that ſo I may be

the

the more brief in those that follow: for by this time I am come to the Laws of St. *Edward*, as he is called; and I should mispend my own time, and abuse others, in vouching all the Demonstrations of Parliaments in his time.

His Charters to *Westminster* are near enough, and may be known of all: wherein he confesseth his Resolutions for going to *Rome*. But, *Optimates, Communi habito Concilio, rogabant me, ut ab intentione desisterem*, his Vows made him more pressing, than else he should have been. But these also his Parliament undertook to satisfie; *Et tandem, utrisque placuit* (so he speaks) *ut mitterentur Legati*, &c.

While these stayed at *Rome*, procuring his Absolution, a Vision to a Monk commandeth repairing (or refounding) of St. *Peters Westminster*, as antient as *Austin* the Monk. (I cannot omit a passage in one of the Popes Letters of that time, telling the King, *That he must expect great Motions and Alterations: for the World was near it's great Change; and the Kingdom* (which he calls, *Sanctorum Regnum*) *foretold in the Scripture, was coming to begin, and never should have an end.*)

King *Edward* refers it to the Parliament; and at length, *Cum totius Regni Electione*, (they are his own words), he sets upon the decayed Minster: Which he rebuilt, (with the *Tenth* of his whole Estate) and there

there reposed the *Reliques* (which the Popes gave to King *Alfred* at his Consecration) with this grand Priviledge of Refuge and Pardon, to any that fled hither, for *Treason*, or any other Crime whatsoever.

Another Charter he granted to the same Minister: *Cum Concilio, & Decreto Archiep. Episcop. Comitum aliorumque Meorum Optimatum.*

And a third Charter addeth, *Aliorumque omnium Optimatum.* And a little lower, *Coram Episcopis, Abbatibus, Comitibus, & omnibus Optimatibus Angliæ, omnique Populo.* A very clear and full Parliament.

His Laws are in print. I must not so much as glance, but as he that followed the great King so swiftly, that his steps could not be seen upon the Sand.

May not his third Chapter extend to *Priviledge of Parliament? ad Dedicat. ad Synod. ad Capitul. venient. Si Summoniti sint, &c. sit summa Pax.* Hoveden will help sometimes for a Comment.

That of *Out-Laws* should be explained. It is, *Ore Legali Regis*; which is, *Per Judicium Coronatorum*; or in the great and old City, *Per Judicium Recordatoris.* See King *Ethelred*'s Charter to *Ulfrie*, of the Lands of *Ethelsig*, outlawed for *Theof. Rep. part 6. Pref.* But of *Woolff-head*, and the *Outlaws* being slain upon *Resistance*, I have spoken already. As also of *Tythes*, and King *Ethelbert's Parliaments* in these Laws mentioned, and of *Rome-scot*, *Danegeld*, and *Wergylds*. But of these, again ere long.

Of

Of the Kings Duty and *Oath*, we muſt ſpeak more in due time. Of his *Pardon*, before, as it might ſtand with the *Oath of his Crown*. Here alſo we find, that when his Pardoning Power was largeſt, yet it could not reach to *Murder* or *Treaſon*, or other Crimes, but ſo as they muſt *abjure*: and if they ſtay and be found, any might do *Juſtice* on them, without *Judgment*. It is the 19th Chapter.

Somewhat we ſaid of *Degrees*, or *Counts*, *Earls*, *Thanes*, or *Barons*. The Phraſe doth here occur; but of elder times by much, nay, long before King *Ethelbert's* Barons: if we may believe Hiſtorians. But of this, again in due time.

Of the *Jews*, alſo before *Judæi, & omnia ſua Regis*, ſeemeth hard; but it had a gentle Comment in ſucceeding times, and here alſo *they muſt be defended*: *Sub tutela & defenſiones Regis Ligeâ*. The Phraſe may be remembred, till we meet it again: King *John* did but confirm King *Richard's* Charter to the *Jews*. See *Hoveden* and *Matthew Paris*, of *Richard* and *John*, *Walſing. Edw.* 1. *& Neuſtria*.

Pax per breve Regis, is a ſhort Expreſſion; but it might have a long gloſs, and be compared with all our books; laying this for a principle or foundation of Law, That *Writs were made by Parliament*; *and without ſuch common Conſent*, *could not be changed*. Of which, the *Mirrour*, *Bracton*, *Fleta*, divers others. But of another *Breve de pace*, before the Combat, in *Right* or *Aſſize*, *Glanvil*, *Hengham*, and the *Regiſter*. Of

Of Frank-pledge, Tythings, Counties, Hundreds, and Wapentake, ſomewhat before. This Law may fill up *Lipſius* on his *Tacitus*: nor is it uſeleſs for the *Militia*. *Hac de cauſâ, totius ille conventus dicitur Wapentac, eo quod per Armorum (i. e. Weapun) tactum, ad vincem confœderati ſunt.*

There is an old Comment on that, *de moribus Germanorum*; that may help and pleaſe in all, of *Hundreds*, *Wapentakes*, *Cities*, *Counties*, with *Counts* or *Eolders*: of which before, in State and Church. But to theſe of the Church, I did not then adde their Power and Cuſtom of *healing the Sick*, by anoynting them. For which, the Saxon Canons of *Ælfrick*, may be peruſed.

In this Chapter of *Greeves*, with the Appendix *de Heretochiis*, we may ſee the whole Model of the *old Militia*; with the Power of Headboroughs, Conſtables, Bayliffs, Aldermen, Sheriffs, Lieutenants, or Generals, all the Greeves both in the *Gree* and *Va*, *Peace* and *War*: for ſo the Law is pleaſed to criticize; and for *Peace* we do *agree*.

The Law is in print, and may be read of all; in which it is ſo clearly ſtated and aſſerted by theſe Laws. I ſhould do wrong to take them in pieces.

Not onely in matters of common Juſtice, or ſerving of *Writs*, or petty Caſes of Peace, as ſome have pleaſed to expreſs it; but *when any unexpected doubtful miſchief ariſeth againſt the Kingdoms (or againſt the Crown)*

Nay,

Nay, when it proceedeth ſo far as to War, Battel, or pitched Fields, the *Heretoches* muſt order the War; *Ordinabant acies, & alas conſtituebans, Prout decuit, & prout eis melius viſum eſt, ad honorem Coronæ, & ad Utilitatem Regni.*

And leſt yet there might be any miſtake, the ſame Law telleth us, That thoſe *Heretoches*, (*ductores exercitus, capitales Conſtabularii, vel Mareſhalli exercitus*) were and ſtill ought to be, choſen *Per Commune Concilium* (by Common Council;) *and for the common good and profit of the Kingdom, even as the Sheriffs* (ſaith that Law) *ought to be choſen.*

Again, the former Laws are renewed for thoſe that *flie*, and thoſe that *die* in the War, and of their *Heriots*; which here are again remitted, with all *Relief*. Of which, before.

I am the longer in this, becauſe it was this very Chapter which has been ſo ſtrangely cited; and that alſo from a place as much ſuſpected, as any of all theſe Laws: which I do not ſpeak as if I thought they might not be ſtrongly aſſerted; even there where the oldeſt Copies are defective. And for one inſtance, of many, I might produce that piece about the *Kings Oath*; which is cleared not only by the *Mirrour*, and divers others, but by another paſſage in the oldeſt of theſe ve-

ry Laws themſelves; by comparing it with what is there ſaid of *King* Edward's *own Oath* to his Kingdom. Of which, much more hereafter, on occaſion.

To that of King *Arthur's*, King *Edgar's*, and King *Ethelſtane's* Conqueſts, much might be added; in ſpecial, touching *Scotland*: Of which, before. And now I adde, That what is here aſcribed to *Eleutherius*, may be much aſſerted and enlarged from thoſe that have clearly ſtated the bounds, extent, and juriſdiction of the *Province* and *Dioceſs* of *York*: for to it belonged (as I find in a very good Author) all the Church of *Scotland*, long before it was divided into modern Biſhopricks.

That of *Norway*, and their Affinities with *England*, and Oath of Fealty, may now be little worth; but in this that is added at the cloſe of that Law, *So did King* Edward *eſtabliſh: Per Commune Concilium totius Regni: By the Common Counſel of the whole Kingdom*, or by Parliament: which may well be added to each and every of thoſe Statutes.

How the *Militia* was (on particular perſons or places) aſſeſſed by *Common Aſſent*, hath been obſerved and cleared already. I ſhall now only adde this, That when ſuch Aſſeſſments were made by

by *Common Council*, it was then no more in the Kings power to *releaſe* them, than it was to *impoſe* them before, or without ſuch *Common Aſſent.*

For this, might be cited in more than an hundred Charters, to religious houſes, and places of greateſt Franchiſe; in which there is ſuch an uſual exception to the *Trined-neceſſity*, of *Military Expedition*; *Caſtle* (or *Burghote*) and *Bricqbote*: for here alſo, as with the *Romans*, they were eſpecially *Pontifices.*

And where-ever theſe are found releaſed, as to *Peterburg*, *Canterbury*, *Weſtminſter*, but eſpecially to *Glaſſenbury*, the firſt and oldeſt Church in *Britain*: *Fons & origo, totius religionis.* It may be a clear Demonſtration of the Parliaments aſſent to ſuch a Charter.

For otherwiſe they could not be diſpenſed with by the King, as we may find expreſſed in divers Charters; as in thoſe of *Crowland*: which yet had great immunities. And of that Reſtriction, *Matth. Paris* may afford us the true reaſon, becauſe *thoſe three were ſetled for the Kingdom*: *Propter Publicam Regni Utilitatem, ut per ea reſiſterent hoſtium in curſibus.* And K. *William*'s Laws, *Caſtel. & Burg. & Civit. fundatæ & ædificatæ ad tuit. Gent. & Popul. Regni, & ad De-*

fens. Regni & idcirco observari debent cum omni libertate, integritate & Ratione.

Private Caſtles for habitation, may be given in *Dower*, and divided by *Pacerners*; but ſo may none for *publick defence.* Yet of ſuch alſo, may a man be Tenant by the *Curteſie*, being able to guard them for Publick ſervice of the Commonwealth.

One grand Objection muſt be removed; but we need not fear it: for it will flie or run away of it ſelf. 'Tis that of the *Conqueſt*, as many are pleaſed to call it; not attending how little in this they be the Kings Friends: for if this were his onely or his main and beſt *Title*, there might be found in future ages, ſome that may come to think it as lawful to conquer him, as it was or could be, to conquer them.

It muſt be conſidered: for if the foundation be not ſure and low, the higher the building is, the nearer its fall. And it hath been obſerved, that the higher *Skale* (got up by accident) is more ready to pop down again, than it was before while it hung in due poize.

It ſeemeth a great weakneſs, to be apt or prone to *Suſpition*: and therefore I ſhall not ſay I do ſuſpect ſome that are moſt zealous for Prerogative, or the Title of Conqueſt, to be leaſt ac-

acquainted with the Laws or Hiſtories of *England*. But I cannot be wholly free from wonder, that any Lawyer or Hiſtorian that was friend to the King, ſhould be paſſionate in theſe, which were ſo clearly quitted by that King whom they call the Conquerour.

He ſtood on Stilts or Patents, or Pantofles; but on plain Engliſh ground, with two feet, as other men. The *left* and the weakeſt was *Succeſſion* to *Edward*, whoſe Kinſman he was, and Heir by Will; as appeareth by divers Paſſages in theſe very Laws of Saint *Edward*, and *William*; which may be ſeen and read of all.

But the right Leg, with the ſtrongeſt and beſt Foot he had to ſtand upon, was the *Peoples Aſſent*, Conſent, Acceptance, and *Election*; which we ſhall yet more fully clear, when we diſcuſs the Right of *Succeſſion* or *Election* to this Crown and Kingdom.

But for the preſent, it may ſuffice to obſerve, That all theſe Laws we now have of King *Edward*'s, come to us through the Hands, and Grant, and Confirmation of King *William* the *Norman*; and no otherwiſe.

Which I need not prove to any that have either read or ſeen the Laws themſelves, of which we ſpeak. For

For in the very Title and Preface thereof (beſides divers other paſſages in them) all this, and much more, is fully related and recorded.

For it is there alſo further added, That all thoſe Laws were ſo preſented to the ſaid King *William*, by a ſworn *Jury* out of every County: Who did alſo aſſert, That theſe which they did preſent as the Laws of St. *Edward*, were the undoubted Laws and Cuſtoms of the Kingdom, that had alſo been collected into a Body by King *Edgar*, and continued (though *ſopite*) through the Troubles of ſucceeding Kings, till *Edward* had the leiſure to renew or rather confirm what was the Law before.

Nay, when among all thoſe Laws King *William* did moſt encline to thoſe which came from *Norway* (whence his Anceſtors and Lords had iſſued forth, and where a Baſtard might inherit) all the *Patriarchs* of *England*, *Compatriotæ Regni, qui Leges edixerant*, did ſo move and preſs him (with ſuch Arguments as may again be well conſidered) that at length in Parliament, *Concilio habito, precatis Baronum*; the King himſelf conſented as they did deſire. This is expreſſed in his own Laws.

And by his own deſire, the Archbiſhop of *Can-*

Canterbury was one of those entrusted with enrolling or recording of those Laws: Which to that very King, and to his Successors to this very day, became one special Clause of the *Coronation-Oath*: Which was, *To confirm all the Laws and Customs of the Kingdom; but especially the Laws of St.* Edward, *called the Confessor.*

And one of King *William*'s own Laws is, That all men observe and keep the Laws of King *Edward* in all things: *Adauctis his quas constituimus, ad Utilitatem Anglorum.*

If this be not yet clear enough for the Laws themselves (which are now extant, and may be read and known of all) we might confirm it much by *Ingulph*, living at the same time, and bringing those Laws with his own hands from *London* to his *Crowland*, with such an Endorsement or Title of his own making: *Leges æquissimi Regis Edwardi, quas Dominus meus inclitus Rex Willielmus Autenticas esse, & perpetuas, per totum Regnum Angliæ, inviolabiliterque tenendas, sub pœnis gravissimis Proclamarat: & suis Justitiis commendarat, &c.* He was like enough to know it.

And the old *Book of Litchfield*, cited in the great

great Reports (beſides that of the *Jury* from every *County*) addeth alſo, That the ſame King *William* did by the Counſel of his Barons, call by Writ of Summons (*Summoniri fecit*) *all the Nobles, Wiſe-men, (Elders of the Witan) and learned Lawyers in each County.* And in that great Parliament, *Ad Preces Communitatis Anglorum, Rex acquievit, &c.* confirming all by Common Council. This of *Litchfield* is now printed in ſeveral places; and *Roger Hoveden* agreeth in *Henry the Second.*

Nor did he onely confirm, but in ſome things *mitigate*; and in divers, explain and clear what might ſeem obſcure or heavy to the People: (*Ad Utilitatem Anglorum.*) His Laws are now printed, both with Mr. *Selden*'s Notes on *Eadmerus*, and with Mr. *Wheelock*'s Impreſſion of the Saxon Laws and Hiſtory; with a very good Preface of Sir *Roger Twiſden.* They do oblige us much, that love and clear our Laws, ſo far as juſt and good.

What Emendations and Additions King *William* made to St. *Edward*'s Laws in this alſo of the *Militia*, we have obſerved before, at our unexpected enterance on this Queſtion. Which

was

was not at all intended, to be once, ſo much as touched, but in one Parentheſis; Which was paſt Recovery, before this Diſcourſe was ſo much as deſigned.

But now having wandred ſo much, and ſo far, (beyond my own purpoſe, as well as my Subject,) I could almoſt, be perſwaded, to ſtep a little further; and to touch (I muſt no more,) upon ſome few paſſages; between the Conqueſt, as they call it; and the *Barons of Wars*; Or the time of the *great Charter*. For, ſince that time, the Rolls and Printed Acts, are every where; much larger, and much better, than my little reading or my leaſure, can preſent them.

Two words have ſound of horror, to the People; who are taught, to think them both, oppreſſions, and the ſins of him they call the *Conqueror*. *Dane-geld*; and the Book of *Doomſday*. (Some have added *Curfeu*, with I know not what, to make poor Children *quake*.)

Theſe, have been proved, to be long before, the *Normans* coming in. To that of *Dane-geld*; I may add, that good King *Edward*, did alſo retain it, to his Coffers; (when the *Daniſh* Storm was over;) till he ſaw, the Devil dance upon it: As the *Crouland* Abbot doth Record. But

it did riſe, from one, to three, to four, to ſix ſhillings on the Hide; but ſo, by Parliament: as may be much collected from the 11th Chap. of King *Edwards* Laws; compared with *Florence* of *Worceſter*, *Hoveden*, *Huntingdon*, *Math. Paris*, and *Math.* of *Weſtminſter*, beſides ſome others, which we muſt produce e're long.

And (to ſay nothing of *eleemoſyne pro Aratris*; of which *Canute* and *Ethelred*:) it is clear, in King *Ethelſtanes* Laws; that ſingle *Hides* (or *Ploughlands*) in *England*, were to maintain two *Horſemen*, with *Arms*; by Act of Parliament. (And this was more it ſeems, than ever was King *Williams Hydage*; or *Dane-geld*.) Which may be added to King *Ethelſtanes Militia*, as alſo, his Doom book; (for all Judgments in one *Form*; of which his Laws ſpeak,) to what is ſaid, of *Booca Doom*.

But to King *Williams Doomſday*, I ſhall now, add, (to what before,) that beſides the *Mirror*, and *Fitz-Herberts*, *N. B.* with the old Abbot of *Croyland*. There is enough, in every ſegment of that Roll, to make one know, it was a *Review*; and little but a Review of what was done before. They do abuſe us elſe, that bid us read, the *T. E. R.* in all that Roll, *Tempore Edwardi Regis*; plain enough, ſometimes, without all Divination.

That

That it was, alſo confirmed by Parliament; may be clear enough from the many exemptions *a ſervitio Regis*, and a *Vice-comit*. Nay to ſome inferiour places; as *Ely* and *Worceſter*: Beſides old *Crowland*: which was not exempted from ſuch ſervice, till the latter *Saxon*, or firſt *Normans* time; though *Ingulph* ſpake of divers *Ethelreds*. But the ſame Abbot, will tell us, that this *Doom Book*, was now, alſo made; *juxta Taxatorum fidem, qui Electi de qualibet Patria*, &c. And that his *Taxors* were both *kind and merciful*; *non ad verum pretium, nec ad verum ſpatium*, &c. *So preventing future Burthens and Exactions. Talem Rotulum, & multum ſimilem ediderat quondam Rex Alfredus*, &c. But *Alfreds* own *Will*, ſeemeth to carry it higher.

Nor was *Ingulph's* favour at the Court, altogether uſeleſs; for, by that, we come to know, that our *Norman* King, even in little things proceeded by a *Great Councel*. So, that our Abbots Charters, muſt be viewed by Parliment. *Coram Domino meo Rege, ac converſo Concilio*, &c. Thence he brought St. *Edward's Laws*; as was obſerved before.

Huntingdon and *Matthew Paris*, with *Matthew* of *Weſtminſter*, ſpake of his *Hydage* and *Doomſday*; as done with great Advice, and Juſtice.

Misit Justiciarios per unamquamque scyram, & inquirere fecit per jusjurandum, quot Hydæ (i. e. *jugera, uni Aratro sufficientia per annum*;) *essent in unaquaque*, &c. Nor are they wholy silent, of his Parliaments, *Cum de more, tenuisset curiam suam, in Natali, ad Glouceſtriam*, and again, at *Winchester*, the like at *London*, in another season.

Tilburiensis telleth us, that *Mony* was paid, to the Crown, by Cities, and Castles, that used no Tillage: But from the Land (or Farms,) only *Victuals*, till *Henry* the first. And when the Kings foreign Wars, did make him press for ready Mony, the people murmured; offering their Plowshares. *Horum igitur Querelis inclinatus Rex*, by advice of his Great Council, (*definito magnatum Concilio*; he sent out discreet, prudent men; that upon view of all the Lands, should assesse the sums, which the Sheriffs were to pay into the Exchequer. This *Gervase* lived a while after King *William*.

Florence of *Worcester*, near his Reign, he telleth us, of a Great Councel, at *Winchester*. And again, of another, at a place called *Pedred*; not only by the King, Arch-Bishops, Bishops, Earls, but also, *primatibus totius Angliæ*, a full Parliament; for which, *Florilegius*, and *Walsingham*, *Newstria*, may be considered, with *Hoveden*, following *Wigornens*.

That

That in his Reign there was an *High Conſtable of England*, (ceaſing in *Henry the Eight*; appeareth by the Parliament Rolls of *Edward* the Fourth: (but *Alfigar* in the Book of *Ely*, was ſuch; in St. *Edwards* time,) and to Him, ſome aſcribe, the Conſtable of *Dover*: with the *Warden*, and Priviledge of the *Cinque Ports* (with their *Hamlets*, or Circuit; including *Rye*, and *Winchelſey*.) But all this ſpeaketh Parliament, as doth alſo, his *New Church Priviledge*: *Communi Concilio Archiep. Epiſcop. Abbat. & omnium Principum Regni mei.* Yet to be ſeen, not only at Sir *Robert Cottons* Jewel Houſe, but among the Rolls with King *Richards* Charters, for the Dean and Chapter of *Lincoln*.

This exemption of the *Church* from *Seculars*, &c. is the more conſiderable, becauſe it came up with the *Norman* King; at the time of *Hildebrand*, whoſe Letters miſſive came hither, *ad Willielmi Regis Concilium.* And that this Councel, was a full Parliament; appeareth, by the Charters (as I may call them;) of the Arch-Biſhop of *York*, *ex præcepto Papæ Gregorii 7.* and *Confirmatione Domini Willielmi Regis, ſub Teſtimonio Univerſalis Anglorum Concilii*, &c. Of which *Roger Hoveden* is clear, telling us alſo, that this King ſummoned, the Arch Biſhops, Biſhops,

Abbots, Counts, Barons, Vice Comit. *cum ſuis Militibus*, were theſe *Knights of Shires.*

To this I may add (from the Continuer, of the *Saxon* Chronology;) that *Lanfranc*, came hither from *Caen*, (on the Kings call, and the Popes Command,) *& primatum Regni Anglorum in Eccleſia Cant. ſuſcepit; eligentibus eum Senioribus, cum Epiſcopis, & principibus, clero, & Populo Angliæ, in curia Regis*, a very clear and full Parliament. Nor may I ſo wrong our Common Law, as to detain that antient Record, which the great Judg in his Reports citeth; of a *Writ of Right*, brought by this *Lanfranc* (againſt *Odo Biſhop of Bajeux*;) and removed by a *Toll*, into the *County Court*, where the King commanded all the good Lawyers, to attend the County; *& a toto Comitatu, Recordatum atque judicatum eſt; That as the King held his Lands, in His Demeſn*; (*in Dominio ſuo*;) *ſo was the Arch Biſhop, to hold his, omnino liberas & quietas in Dominiquo ſuo*;) which Judgment was afterward confirmed by the King and Parliament, *cum conſenſu omnium principum ſuorum.*

With which Record, I may compare the old Manuſcrips in *Bennets Coll. Cambridge*; telling us, *of a great Moot (magnum placitum) in loco qui dicitur Pinenden; in quo Lanfrancus diratiocinatur*, and the

the concluſion, that he was to hold his Lands, and Cuſtoms, by *Sea* and *Land*; as free, as the King held his: ezcept in *three things*; *ſi regalis via fuerit effoſſa*; *arbor inciſa juxta, ſuper eam ceciderit, ſi homicidium factum & ſanguis in ea fuſus fuerit*; *Regi dabit, alioquin liber a Regis exactoribus.*

In the ſame Author, were read, of a *Great Counſel* at *London*; in that *Normans* Reign, and of another at *Gloceſter*; where the Arch Biſhop of *York*, (*jubente Rege, et Lanfranco conſentiente,*) *did conſecrate William Biſhop of Durham*; having no help (*adjunctorium,*) from the *Scottiſh Biſhops, ſubject to him*: which may be added to that before, of *Scotland*, belonging to the Province or *Dioceſſe of York.*

Nor can I abſtain from the next paragraph, in the ſame Author, how *Lanfranc* did conſecrate *Donate* (a Monk of *Canterbury*;) *ad Regnum Dubliniæ*, at the Requeſt of the *King, Clergy*, and *people of Ireland. Petente Rege, clero & populo Hiberniæ*, which with divers others, might be one Argument, for the Antiquity of *Iriſh Parliments*, and their dependance on *England*, long before King *Henry the Second.*

For

For which I might alſo cite King *Edgars* Charters, *Oſwalds* Law; and divers Hiſtorians of his times. But the Charters mention *Dublin* it ſelf; and yet our Lawyers, are ſo Courteous as to free *Ireland* from our Laws and Cuſtoms, till towards the end of King *John*, and ſome of them conjecture, *that the Brehon* Law, came in again, and that our Parliament, obliged them not till *Poynings Law in Henry the ſeventh.*

But to return to our *Norman* King. I need not beg proofs of Parliaments, in his time; at leaſt not to thoſe, who know the Priviledge of antient *Demeſne*, which therefore is free, from ſending to Parliaments, and from Knights Charges, and Taxes of Parliament, becauſe it was in the Crowns, not only in King *William*, but before him, in King *Edward*; and the *Rolls of Winchester*, for which, the old Books are very clear, with divers Records, of *Edward the third, and Henry the fourth: beſides natura brevium*, That I ſay nothing of the old *Tractat. de antiquo Dominico*, which is ſtiled a Statute among our Engliſh Statutes.

And beſides all the late Reports, or Records; I find it in the Year Books of *Edward the Third*, that he ſued a Writ of Contempt, againſt the Biſhop of *Norwich*, for encroaching on *Edmondsbury*

bury, againſt expreſs Act of Parliament: By King *William the Conqueror*, and by the Arch-Biſhop of *Canterbury*, and all the other Biſhops, Counts and Barons of *England*. It is 21 of *Ed.* 3. *Mich.* fol. 60. *Title* 7. *Contempt*, againſt an Act of Parliament.

This might well be one of the reaſons, why the great Judge, giveth ſo much credit, to the old *Modus of Parliament, as it was held in the time of King* Edward the Confeſſor, which as the antient copy ſaith, was *by the diſcreet men of the Kingdom, recited before King* William *the* Norman, *and by him approved; and in his time uſed.*

I have cited it before, and compared it, with *Iriſh Modus*: which my much honoured friend Mr. *Hackevil*, one of the *Maſters of Chancery*, hath under his hand atteſted; from the *Great Seal and Charter of Henry the fourth*, (which himſelf hath ſeen:) reciting a former Charter of King *Henry R. Angliæ & Hiberniæ conqueſtor, & Dominus*, who ſent, the ſame *Modus* into *Ireland*.

Where himſelf or his Son (*John ſans terre*;) had no great work to reduce them, to the civility of Parliaments: To which they had been long before accuſtomed, and the Roll

ſaith, *communi omnium de Hibernia conſenſu, teneri ſtatuit*, &c. nor doth the diviſion of the *Iriſh-Shires* ſeem ſo lately ſetled, as ſome have thought; although I may not diſſent from the great Patron of Civill, and Eccleſiaſtical Learning, the late *Primate of Ireland*.

Touching that *Iriſh Modus*, I have very little to add, to the *fourth part of the great Inſtitutes*: in ſeveral places. I ſhall now, only obſerve, that both theſe, old *Modi of Parliaments* do agree; in this Cuſtom of the Kingdom, *that the King ſhould require no Ayd, but in full Parliament; and in Writing to be delivered to each in degree Parliament.*

And both they agree, that *every new, difficult caſe of Peace; and any war emergent, within, or without the Kingdom, (vel Guerne emergat, in Regno vel extra,) ought to be written down, in full Parliaments; and therein to be debated*, which may be conſidered, by all that will argue the *Militia*.

To which alſo we may add, one clauſe of the Jewiſh Laws; of their great *Sanhedrim*, to whom, they retain the power of *Peace* and *War*; eſpecially where it is Arbitrary, and not meerly *defenſive*, in which the Law of nature maketh many Magiſtrates; and this might with eaſe

eaſe be confirmed, from the Laws and Cuſtoms, of all Civil Kingdoms in all ages. But I muſt not wander, from our Engliſh Laws.

I had almoſt forgotten that, which ſhould be well remembred. Although many would perſwade us to ſeek our Laws in the *Cuſtumier*, of *Normandy*; it is not only affirmed in the Great *Reports*; but alſo aſſerted by *Guil de Rovell Alenconien*; (and proved by divers Argumenrs;) in his Commentaries, on that *Grand Cuſtumier*; that the *Normans*, had their chief Laws from *Hence*. As had alſo the *Dines*; in the time of *Canute*, for which, we might have more proof, and witneſs, than the Abbot of *Crowland*. So much even ſtrangers did Love and Honour old Engliſh Laws.

Of King *William the Second*, (Sirnamed *Rufus*?) I ſhall ſpeak but little; for I muſt diſcuſs his Election, and Coronation Oath; in a fitter place.

Some footſteps we find of his Parliaments; in divers; *Wigornenſis* and *Hoveden* tell us, that when he would have conſtrained the *Scottiſh* King; *ut ſecundum judicium Barbnum ſuorum, in curia ſua, Rectitudinem ei faceret*; *Malcolm* did refuſe to do it, but in the Confines, or Marches, Where (he could not deny;) but the Kings of

Scotland, were accuſtomed, rectitudinem facere regibus Angliæ. But he then ſaid, *it ought to be, by the Judgement* of the Parliaments of *both Kingdoms*; *ſecundum judicium utriuſque Regni primatum*;

And I find the like Record, cited on *Forteſcue*, from *Godfrey of Malmſbury*. But *Huntingdon*, and *Matthew Paris* alſo relate, that the ſame King *Malcolm*, did ſubmit, both to *do Homage*; and to *ſwear Fealty* to our Engliſh King, and *Paris* addeth, a pretty Story of King *Malcolms* overlooking Treaſon. But again to King *William*.

Of his Errors in Government, I ſhall only ſay, that if *Edom*, did really ſignifie *Red*, as hath been thought; I could believe, that all Hiſtorians, ſpeaking of *Adamites*, then oppreſſing the People; might allude to the near *affinity*, between *Edom* and *Ruſus*, for *Red*. For, this was his Sirname, of King *William the Second*.

Henry the Firſt, is yet alive in his Laws and Charters. Not only in *Wendover*, with other Hiſtorians; but among the Rolls, and Records, yet to be ſeen, in the Exchequer. They are now in Print, with the Statutes of King *William*; after the *Saxon Laws*. I muſt but run, and glance.

His Charter acknowledgeth his Crown, to the Mercy of God, and the Common Councel. *Communi Concilio, & assensu, Baronum Regni Angliæ.*

It confirmeth King *Edwards* Laws, with all those *Emendations* which King *William* added, for the profit of the Kingdom. It forbiddeth all Levies, nay, the *Monetagium Commune*; but what was agreed, and setled in King *Edwards* Reign.

And the *Test* of that Charter, is, by *Archbishops, Bishops, Barons, Comitatibus, Vice-Comitatibus, & optimatibus, totius Regni Angliæ, apud Westmonasterienses, quando Coronatus fui.* This was copied out into every County, and kept in every *Abby*. So much also, we find in *Mathew Paris*.

Of his Charter to *London*, I may touch, in another place. This I must not omit in his Laws. *Sive agenda præcipiat, levia permittat, hortatur maxima, vitanda prohibeat*, yet still the Laws must be, *Manifesta, Justa, Honesta, & Possibilis*; a kind of sacred *Tetragram*. It is the 4th. Chapter.

And the next, is the Basis, or Foundation of our Law process, and of all Judicials; *In all Causes, Accusers, Parties, (or Defenders,) Witnesses*

ſes and Judges; he and muſt be diſtinct. Nec peregrina ſint judicia, vel a non ſuo judice, vel loco, vel Tempore celebrata; nec inter dubia, vel abſente accuſato dicta ſit ſententia, &c.

Nihil fiat abſque Accuſatore; nam Deus & Dominus Noſter Jeſus Chriſtus, Judam furem eſſe ſciebat; ſed quia non accuſatus, ideo non abreptus. Teſtes Legitimi ſint, & preſentes, abſque ulla infamia, vel ſuſpicione, vel manifeſta Macula. Recte, Sacerdotes accuſare non poſſunt (Laicos.) Nec oportet quemquam Judicari, vel damnari, priuſquam Legitimos Accuſatores habeat preſentes: Locumque Defendendi accipiat, ad abluenda crimina, &c.

And again, Pulſatus ante ſuum judicem, ſi voluerit, cauſam ſuam dicat, & non ante ſuum Judicem pulſatus, ſi voluerit, taceat. Si quis, Judices ſuſpectos habeat, advocet, aut contradicat. Appellantem, & vitiatam cauſam appellationis Remedio, ſublevantem; non debet afflictio vel detentionis injuriare Cuſtodia. Unuſquiſque per P A R E S ſuos, Judicandus eſt, & ejuſdem Provinciæ. Quicquid adverſus Abſentes, vel non a ſuis judicibus; penitus evacuetur, Chap. the 5th. and the 31th.

Juramentum, debet habere Comites, Veritatem, Juſtitiam, & Judicium: ſi iſta defecerint, non juramentum, ſed perjurium eſt. Qui per lapidem, falſum Jurat, perjurus eſt. Deus iſta accipit, ſicut ille,

cui

cui juratur accipit. Juramenta filii & filiæ, nesciente Patre; & vota Monachi, nesciente Abbate, & juramenta pueri, irrito sunt.

Are These the Laws of *England*; or of *Nature*, rather? These we owe to *Beauclerck*; which he owed much to *Cambridge*. See *Malms.* of *Plato's* Kings.

Touching the *Militia*, (beside that in General, confirming King *Edwards*; and King *Williams* (*Emendations*:) There are some particular, as of Tenants by *Knights Service*, to be freed from *Gilds*, &c. That so they might be more ready, for the *Defence of the Kingdom*: and in it, the Kings Service.

This agreeth with the old Writ, *de essend. Quiet: de Tallagio*: Which the Tenant in *Chivalry*, might require of Right. And Tenants in *Dower*, or Widows, had the like Priviledge, of which the Old *Register*, *& natura brevium*.

That also of *Edgar* or *Canute*, for *Cowards in Land*, or *Sea-fight* is renued; with that of *Boocland*, as before. Much also of *Helfeng*.

Releifs are agreed and setled. For *Earls* and the Kings *Thaynes*; with others called *Meane Thaynes*. But in some Chapters *Thaynes* are equal to *Barons*. (And all Tenants *En chief*, at

Cla-

Clarendon, were ſtiled *Barons*: and *Relief*, is Coſin German to the Saxon *Heriot*. Being for the *Heir* or *Militia*: whence *Heretoche* in King *Edwards* Laws.

But the Dutch *Here*, is alſo *Dominus*, as *Senior*, in ſo many Nations; ſince the time of *Charles the Great*. And ſome will have the Saxon *Heregeat*, to be the *Her's Geat*, or *Beaſt* of the *Lord*, or *Here*: (which of old, was paid before, or rather than, the *Mortuary*.) And from this *Here*, ſom would derive *Heres*. So, that all *Heirs*, ſhould be *Her's* or Lords; as *Homines* were *Yeomen*, (*You Men*, or *Young Men*:) but *Homines*, in Law (as with us, *Men*) are *Servi*. Such they ſay were *Yeomen*, and none *Gentlemen* but ſuch as came from *Barons*; or at leaſt the Tenants in *Capite*, if not in *Antient Demeſn*. But for this, ſee *Ed. v. Tit. Attorney*. 103. And the Learned *Janus*.

Dane-geld, is here alſo reduced to 12*d*. the Hyde; as of Old: (from which it rambled, to 3, 4, 6, 8, 10, or 12.) ſtrict proviſion, is alſo made for keeping of *Arms*; and againſt uſing or lending them, for the dammage of Others. Nay a mulct, is ſet upon him, whoſe Lance, or Sword, doth much Treſpaſs; though againſt his will. He is to be ſevere-

ly

ly puniſhed, that diſarmeth any unjuſtly; and muſt anſwer, all the miſchief that enſueth ſuch diſarming.

To this Kings time, belongeth the caſe of *William* the Kings Chamberlain, *de Londonia*: who refuſed to find a man, for the Army, as his *Tenour* required: But the *Abbot of Abbingdon* (of whom he held;) *in preſentia ſapientum* (in a *Witen Moot*) *rem ventilari fecit*, &c. *Unde cum Lege Patriæ, decretum proceſsiſſet, ipſum exortem Terræ, merito deberi fieri*, &c. by Friends, it was compoſed; and the Tenant enjoyed his Land.

I find it, from Sir *Robert Cottons* ineſtimable Treaſury, cited by Mr. *Selden* on *Hengham*. Nor can I deny, but this (with divers other caſes,) might forfeit the Land. But, as in caſe of *Alienation of ſuch Tenures*; a Statute of *Edward* the 3d. provided that the King ſhall not retain the *Forfeits*, but ſhall only, take a *Fine Reaſonable*; (which the Chancery, muſt alſo aſſeſs; by due Proceſs:) So, is our Law very tender in all caſes of Forfeit. And among the old *Wytes*, *Wardwyte* was for the *Militia*: being an acquittance of Mercy to him that had not found a man, for the *Serviſe*; according to his Tenure. Of which old *Fleta*, with others.

The Laws of this King do evince, the Tryal

per PARES to be long before, the great Charter. Nor would it be hard, to ſhew it, before King *Henry*, and beſides all other hints, through Elder times; the caſe is well known, of *Roger Fitz Osborn*, apprehended by *Tiptoft* Sheriff of *Worceſterſhire*; and condemned for Treaſon in King *William* the *Norman*; *per judicium parium ſuorum*; Of which antient Hiſtorians, before the Commentator on *Magna Charta*.

I ſhould not omit King *Henry*'s Charter, to the Abbot of *Bec*, confirming his antient Cuſtoms, and Priviledges, preſcribed for St. *Edmonds* time, for *Grand Aſsizes*, &c. yet to be found in the Book of *Aſsizes*; *lib.* 26. Pl. 24. and in the 3d. or 8th. part of the great Reports: and in the Comment on *Magna Charta*, *cap.* 13. but here it is from *Etheired* and *Edward the Confeſſor*.

One of his Priviledges, was to be free from the Juſties of *either Bench*, and of *Aſsize*. Which is one of the firſt Records, for the antient *Benches*. But it may not be impoſſible to trace them, thorow ſome Elder times.

For the Saxon Law, (ſo often repeated, and confirmed) that none ſhould *complain to the King but want of Right*; or againſt *ſummum jus*, at *Home*, might in modern Language be tranſlated Thus. The *Writ of Right*, muſt abide the *Baron* or Bayliffe:

liffe : (For it cannot fall to a *Copyhold Steward*:) except the Lords default, or conſent, or the Tenants ſuit, procure a *Tolt*, to lift it up to the *County Court*. Or a *Pone*, place it in the *Common Pleas*.

That ſuch a courſe was antient, may be gathered from the *Mirror*, *Aſſer*, and others of *Alfred*, *Edgar*, *Canute*, *Ethelred*: and of the *Tolt* before, in King *William*. To which I may add the Writ of *Right* (in the third Book of *Reports*;) brought by *J. de Beverlace*, againſt *Walter* of *Fridaſtern*; and by a *Tolt* removed from the *Court Baron*, to the *County*; and for default of the *Baron*, (how it muſt be falſified, we may touch; (anon.) it was concluded, before *Ranulph de Glanvil*, Sheriff of *Yorkſhire*.

Glanvil is clear enough; for the courſe of removing to higher Courts; and of the *Writ de Pace*, ſtepping between the Combat (on the *Writ of Right*) and *Aſsize*, *Coram juſtitiis in Banco ſedentibus*, and although this Book (intituled *Glanvil*) was not written, till about *Henry* the 2d. yet it is plain enough, that he ſpeaketh of *Antient Cuſtom*. His words are very conſiderable.

The *grand Aſsize* (ſaith he;) *is a Royal benefit, granted by the Parliament*; (*Clementia principis, de Concilio procerum, populis indultum*;) as being that

which ſaved blood, and did oft prevent the Combat (on the *Writ of Right*;) and of this he ſpeaketh (in the third of the ſame Book;) as of a very old and antient Cuſtom. *Secundum jus & conſuetudinem Regni antiquam.* A weighty expreſſion, from ſo antient an Author: which may poſſibly lead us higher than the *Saxon* times. For, we may find the Duel, or Combat, among the *Gaules* (from *Britiſh Druides*:) as among the *Germans* alſo; whence our Fathers came.

Nonnunquam etiam armis de principatu contendunt. So of the *Gauls* or *Britiſh Druids*; He that was like to know it, and of thoſe, and *Germans*, *Tacitus*, and *Diodorus Siculus*, before *Aventinus*. Some obſerve it, in the *Salique Law*; and among the Laws of *Charlemaign*, and that the *Longobards* did bring it into *Italy*; where it was alſo ſetled by Law. But of our Anceſtors combats, in another place.

I know not any *Fines* upon Record, till *Richard* the Firſt. But *Stowels* Caſe in *Plowden*, may inform us, that they were before the *Norman*. And we need not doubt, the Books of *Edward* the third; ſpeaking of Benches, ſettled in *Henry* the firſt, but I do not remember, the phraſe of *Capitalis Juſticiarius noſter*, till *great Charter*; which repeateth elder Cuſtoms.

Good-

Goodwin, the famous Earl of *Kent*, among the *Saxons*, had two Sons, that (in as good an Author as *Huntington*) are ſtiled, *Regni Juſticiariis*; (the phraſe is common, in *Hoveden*, and others, of the times of *Clarendon* Aſſizes.) And K. *Edgar* had a Coſin *Ailwin*; who was *totius Angliæ Aldermannus*; which is ſuppoſed, *Lord Chief Juſtice*; by a Learned man; beſides the beſt (though yet imperfect) Gloſſary. But it might denote the *Lord High Conſtable*: Of which before, in *William* the firſt.

And *William* the 2d. found great *Odo* of *Baieux*, ſetled L. Ch. Juſtice of *England*. *Juſticiarius totius Angliæ*. So, *Matth.* of *Weſtminſter*. and *Huntingdon* calleth him, *Juſticiarius*, and *Princeps* and *Moderator totius Angliæ*, in *Wigornenſis*, He is *Cuſtos Angliæ*. And the phraſe of *Juſticiarius*, is alſo in *Matth. Paris* of *William* the firſt: *Juſticiarii in Banco Regio*, of after times, as alſo, *placita de Nova diſſeiſſena*; before Juſtices in *Eyre*. But he ſpeaketh of *placita lethifera*; the Pleas of Life and Death; (yea, even in Biſhops Courts;) about the *Normans* coming in.

But in *Polydore*, we find out 4 *Terms*, (with divers other elder Cuſtomes) aſcribed to the firſt *Norman*. But that which he addeth, of the place, for theſe Courts, to be, at the Kings appointment;

ment; might be true: till the Law fixed the *Pleas*, which may be, long before our Charter, of *Henry* 3d. where it is confirmed, not created. But, for the Kings *Bench*, the *Return* was, *coram Nobis ubicunque*, &c. and for the *Pleas*, *coram Justiciariis nostris apud Westmon.*

That which *Virgil* addeth of the *Judges in Westminster; and of those higher beyond appeal*; and *of Justices of Peace*, setled by the *Conqueror*; (as he saith *Sheriffs* were,) in every *County*: may be more considered. For it may be, as much too late, as, some have thought it, too early.

They which presume to make K. *Henries* Cubit the first *Standard* of *Winchester*; must refute the old *Saxon* Laws; (of which before:) For, those may seem to deserve, as much credit as *Malmsbury*, other marks.

That he did confirm the *Curtesie d' Angletterre* I may yeild to the *Mirror*, and other Authors: but not that he first began it. For the Statute of *Kentish* Customs; and those that treat of Gavelkind, may shew us an Older *Tenure by Curtesie*; there also, where the Tenant had no Issue.

And this may teach us, whence the like Custom came into *Ireland*; as also to be, *Curialitas Scotiæ*; which our master seemeth to forget, when he saith *Que ne'st use en auter Realm, forsque*

tant

tant ſolement en Engleterre. But his Commentator he lyeth in this; and in divers other things.

In caſe *Entails*, this Engliſh *Curteſie* is very remarkable: in which the Book of Caſes have great diverſity. But thoſe that perſwade us, there was no Land in *Tayles* before the 2d. of *Weſtminſter*, in King *Edward* the firſt; (which are all, that ſubſcribe to *Littleton*;) muſt interpret the Laws of King *Alfred*, much otherwiſe than I can do. For the 37th. Chap. of his Laws, is to me, much clearer, for Lands Entail'd; then is all the Statute, *de Donis Conditionalibus*.

One Caſe of the *Courteſie*; may be conſidered, for the *Militia*. If Land *in Capite* deſcend to a Woman; who upon Office found, intrudeth (on the King;) and taketh an Husband; and by him, hath Iſſue; and then dieth: yet cannot the King eject or detain the man; but he ſhall be *Tenant by the Kingdoms Curteſie*; although he came in, upon *Intruſion*. Which ſeemeth to hint, that Our Law, did chiefly intend, the Kingdoms good defence, and ſervice, (which might be performed, by ſuch an intruder:) rather than the Kings pleaſure; or his bare Prerogative, in this, which is thought, ſo great a Prerogative, *of Tenure in Capite*. For which the Comments on *Magna Charta*. and the Statute of *Prerogative*;

with

with *Littletons Dower*, and *Curteſie*; are clear enough.

To *Henry* the firſt, they alſo aſcribe the *Curteſie*; of ſaving the *wreck*, from his *Exchequer*; if there were, ſo much as a *Cat*, or a breathing Creature let in the Ship. I do not deny him, to be ſo courteous as to confirm, ſome ſuch Sea-Cuſtom; (for which, he had a very ſad Occaſion; when his Sons and Daughter, with ſo many Friends were drown'd in one Shipwrack.) But, as *Richard*, ſoon after him, ſeemeth more courteous, in this alſo, (if we may believe *Hoveden*:) So I doubt not, to aſſert it, to higher and elder Times. And yet the Law *Maritime*, is dark enough: with all the juriſdiction of the Court *Admiral*. Whoſe office, may be harder, than the Name: A ſtrange mixture of *Greek* and *Arabick*.

The old *MS. del' Office del' Admiral*; hath divers Records of *H.* 1. *R.* 1. and K. *John*: Speaking of *Tryals* by 12. (as at Common Law;) but now the practiſe is much otherwiſe. In the Rolls of *Ed.* 1. the Name of *Admiral*: but not in our Printed Laws, that I know, till *Edw.* 2d. And in *Edw.* 3d. the Rolls are full of that Office, parted among divers: for the North and South Seas, &c. As was touched before, in *Edgar*.

In *Richard* the 2d. it was brought to a weldy mo-

model: being *uncertain* rather than *infinite* before. For the bounds were ever ſtraiter much, than ſome may imagine. They were again diſputed in *Henry the 4th. Eliz.* and *James*. It lies more open to the Common Law, than to the Wind and to a Premunire, (ſome are apt to think;) much more, then all are aware. I may touch it again in a fitter place.

Here I ſhall only add, that beſides the Laws of *Arthur* the *Brittain*, and *Edgar* the *Saxon*; we have ſome Records (for ſo I may call them,) of Cuſtoms by Sea; as well as by Land. With Priviledge, to ſome, below the King; before the *Norman*; whom they make the Founder, (yet he was but Patron,) of the Ports; and *Wardens* for the Sea. Somewhat of this in *Lanfranc's* Caſe before: and more again ere long.

Hiſtorians are clear and full of this King's Parliaments; and of his *Summons* to Parliament. *Majores natu Angliæ Londoniæ Congregavit.* and again, *principes omnes & totius Regni Nobilitatem ſanctione adhibitâ*: ſo the Monk of *Worceſter*, and *Hoveden* (almoſt in the ſame words,) which *Matthew Paris*, expreſſeth thus; *magnatibus regni Edicto Convocatis.* And in *Walſinghams Neuſtria*; *Majoribus regni*; and *Principibus Convocatis*; *Virgil* himſelf confeſſeth his full Parliaments.

And of a *Convocation House*, distinct from the Parliament, sitting at the same time; they are plain enough. *Et cum rege principes regni omnes, tam Eccles. quam Secular apud Westmon. ubi etiam Anselm. Cantuar. Archiep. magnum tenuit Consilium; de his quæ ad Christianitatem pertinent.* as *Florence*, and *Hoveden*.

Huntingdon, is also clear in such a distinction; *Rex tenuit Concilium apud Londoniam; & Willielmus Archiep. Cantuariensis, similiter in eodem villa, apud Westmon.* and this Author useth to stile, the Parliament, *magnum placitum*, (of which before;) and the *Convocation House*, *Concilium*, or *Synodus*; which yet in him, in all, was confirmed by Parliament; or else invalid.

In Parliament were also decided, the Great Contests between *Canterbury* and *York*; not only concerning the Crown, or Act of Coronation: in which (to this King,) they both joyned; as we find in *Matth. Paris*, and *Walsingham*. But the Parliament declared, that it did not at all belong to *York*: as besides *Hoveden*, we read in him, that continueth *Florence* of *Worcester*. But in *Beckets* absence, it did fall to *York*: and so it had been before. So also *Canterburies* contest with the King was debated in full Parliament, three days together, in the Arch Bishops absence: and at length

length compoſed, with the conſent rather than content of both parties.

The King was reſolute for inveſtiture as he found it from his Father and Brother: the Clergy was pertinacious, for the Popes Decrees. But the Emperour (Son in Law, to our King;) did ſo muzzle Pope *Paſchal*; that he Conſents and Decrees, that none ſhould be Conſecrate, but whom the *King Inveſted*, as the *Clergy*, and *People choſe him*.

It ſeemeth conſiderable, how all Hiſtorians (of that time and diſpute,) do Record, the choice of Biſhops, to be in the *People*: in *Phebe* and in *Populo*, as well as in *Clero*.

They mention *Radulph*, ordained a Biſhop for the *Orcades*: but rejected by all, becauſe not Elected by Common aſſent of the People; *Plebis, Clero, Principis*, 'tis every where in the old Monks; and how the poor Biſhop, wandred up and down, as an aſſiſtant, to other Prelates. Of him and of Engliſh Right in *Scotland*, and *Ireland*; much might be added, from the Notes of *Eadmerus*; and ſomewhat of *Lanfrancs* Plea at *Pinenden*.

And at Prince *Roberts* Landing; *commoti ſunt principes erga Regem cauſa Roberti*, &c. But many of the Lords left the Parliament, (*ſubtrahentes ſe*

de Curia;) *ſed Epiſcopi, et milites Gregarii & Angli*, (the Commons) ſtuck to the King; who was *Provincialibus gratus*: and at length the *Witan* or Parliament, compoſed the quarrel. *Sapientiores utriuſque partis habito conſilio, Pacem inter fratres compoſuere.* 'Tis in *Florence* and *Hoveden*, with *Malmſbury*.

Wendover with *Huntingdon* Record, how the great Firebrand in that War, *Ranulph* of *Durham*, was committed by the Parliament: *de Communi Conſilio Gentis Anglorum*. This was the great man. whom K. *William*, had made *Pacitator*, in *Matth. Paris*: but *Placitator & exactor totius Regni*, in the Monk of *Worceſter*.

His continuer addeth alſo, that the Peace, or League with *France*, in this Kings time; was made by Parliament; *Conſilio optimatum*: and that by advice of Common Council, the Cuſtody and Conſtableſhip of the Caſtle of *Ros* or *Roch* (with its Ford, &c.) were ſetled in the Arch-Biſhop, and Church of *Canterbury*: with leave to build a *Tower*, and divers other Priviledges, for the *Militia*.

I muſt not mention the Orders of King *Henries* Parliaments, againſt Money *Clippers* and corrupters: with ſuch a change of Money, as made things very dear. So dear a time that an Horſe-

load

load of good Wheat, could ſcarcely be bought under ſix ſhillings: as *Henry* of *Huntingdon* and others.

Of King *Stephens Election*, more, when I ſhall diſcuſs, the Right of *Succeſſion* to the Crown. But I muſt not omit that which, of him, is Recorded by ſo many good Authors: That he did prohibit the Laws brought hither from *Rome*. And this alſo by Parliament: as *Bale* affirmeth. But of this, in much older writers.

Frier Bacon is one, (in his Compendium of Theology, or his *opus minus*: and the great Reporter citeth it, from *Bacons impedimentum ſapientiæ*.) He was a very Learned man, and a moſt genuine *Son of Art*; his *Opticks* and his *Burning-glaſſes*, would be more enquired after; for they may be little worſe than thoſe of *Archimedes*, who in this is newly found to go beyond himſelf.

Such Glaſſes muſt be Conick Section: and in Concaves not exactly *Circular*, but *parabolical*, for which there is as real Demonſtration, (by the Law of Reflections;) as for the beſt perſpectives, (by refractions,) in *Ellipſes*, and *Hyperbolies*: to which I muſt not add, that *Mirandum Naturæ* of two lines, that approach nearer and nearer, *in infinitum*, yet they ſtill ſhall be Aſymptots, and never meet, (for ſuch attend *Hyperbolies*.

Which

Which yet, is more Demonſtrable, by *Reaſon*; than is that of *Merſennus*, (or others) by *ſenſe*; that Concave Glaſſes may be placed in ſuch a continued proportion (may I ſay) of *Reflection*; that by ſuch it may be poſſible to fire a Ship, (or other matter combuſtible;) at a far greater diſtance, than between *Dover* and *Calice*. I ſay not (as ſome have ſaid,) *in infinitum*.

But in this and all the *Mathematicks*; who can add, to him that did contract (and correct) *Longomont*, into a page? Our Country-man, he is: but at too great a diſtance, in *Breda*.

But I muſt not wander from K. *Stephen*. His Repeal of Roman Laws, is alſo in *Sarisburienſis* (living in the time of K. *Henry* the 2d:) an Author of Credit, and polite enough. It is among his Court trifles (*Polteraticus*, or *de nugis Curialium*).

Nor is he content to meddle only, with mean Courtiers; but even of the higheſt, he is plain enough. And one of his Theſis, is, that by Reaſon and Scripture, it is both Lawful, and a glorious Act, to kill a publick Tyrant. But of his exceptions to the Oath of *Fealty*; we muſt have more in its Time and Place.

That of K. *Stephen* is in his 8th. Book, and 22 chap. (near enough to his diſcourſe of Tyrany.) Where we have alſo an hint of him, that

brought

brought thoſe Laws into this Kingdom. *Theobald* the Arch Biſhop of *Canterbury*, going to *Rome* for his Pall (ſome ſay ;) and for this the Monk of *Malmesbury*, would be conſidered; Who hath alſo Recorded, K. *Stephens* Oath ; of which we muſt ſpeak again. I muſt not diſpute whether thoſe *Italian* Laws, by him prohibited ; were the *Civil*, or the *Canon* Laws : which I rather believe. Although I cannot deny, but the Civil alſo did come in, or intrude upon our Engliſh Laws. Nor may I forget a paſſage of Parliament in that famous Appeal, or charge of Treaſon, in King *Richard* the Second's Time.

The Lawyers eſpecially Civilians, were conſulted, about the charge. They conceived it, not to be rightly moulded, according to the forms of Law. But the great Council reſolved, and declared, that they would proceed, by no other Law, but the courſe and *Cuſtom* of *Parliament*. To which they added, that *England* never was, ought or ſhould be Ruled or Governed, by the *Civil Law* : which yet is enough : (ſome think too much ;) in cauſes *Maritime* and *Eccleſiaſtick*, that I ſpeak not of any other Courts.

Forteſcue (or rather the young Prince in him) telleth us, of ſome of our Kings, that have attempted to bring in, the *Civil Laws*, and *patrias*

Leges abolere, but I cannot tell *who*, those were; no more, than the Learned Commentator. Except perhaps, he may reach up, to King *Lucius*; who did desire the *Roman Laws*, (even for the State:) but can we say, the *Civil Laws*, were then *Born*? or at least *Christned*, enough for a Christian King?

But the reason, why, any King so much esteemed the *Civil Law*; may be rightly guessed; to be this, grand maxim of Tyranny; *Quod principi placuit, Legis habet vigorem*. A Sentence of the Civil, Royal or Imperial Laws; citeth indeed, by *Glanvil*, *Bracton*, and others of our Lawyers: who refuted, rather than allowed it. But in this who can add to Mr. *Seldens* late Dissertations on *Fleta*.

Wigornensis, lived till K. *Stephens* time. In him, or his *Continuer*, we find what Laws these were, & *how*, or *who* did bring them hither. For we are there told, that *Theobald* with other Prelates, had a Summons from the Pope to *Rome*: and there were admitted to a *Council*; such as many ages could not Parallel. For thence, (he saith) they brought those *Canons*, or *Decrees*; *quæ longe lateque per Angliam jam Conscripta*.

He lived not perhaps to know they were prohibited: but he doth intimate, enough, in what a cold

a cold manner, the Parliament did entertain, the Legate, ſent from *Rome*. He was a great *Leveller*, it ſeemeth: For, he came, to pull down, and to deſtroy; that ſo, he might plant, or build, we read it, in the Monks. Who bring, this Legate, *Coram Rege & primoribus*. And again, before the *Commons* alſo; *Epiſcopis, Abbatibus, & innumera Cleri & Populi multitudine*.

Ere long, we find K. *Stephen* at another Parliament; *ad Boum vadum Oxes foord*; or *Oxford*. Where ſome Lords, or Prelates, are committed, for ſuſpicion of Treaſon. And by ſome it is aſcribed to the King alone. But in the Monk of *Malmesbury*, we may find it done upon complaint of Thoſe, he calleth *potent Laicks*: and by Councel, or perſwaſion of *Magnates*, and *Proceres Regni*.

The thing doth ſpeak it ſelf. For one of the Lords, committed was the great *Roger* of *Salisbury*, (the grand Favorite;) of whom before. His Charge was this, in chief; that without leave of King and Parliament; he had built, and fortified a Caſtle. But in his *own Deviſe* (this was the Caſtles name;) he did enſnare himſelf. The Name and Fate, hath ſince been found, obſerved more than once; and yet they write, it was the faireſt Caſtle in all *Europe*.

Matth. Paris followeth *Huntingdon* and *Hoveden*;

den; but in this, they both come short of *Malmsbury*; well acquainted with that famous *Roger*, whose misgiving heart, was like, to have prevented, what did follow, in that Parliament. But so we might have lost, or mist that Act, which here was made, for the *Militia*: setled clearly in the King and Parliament.

We find it also in the old Continuer of the Monk of *Worcester*. Who living at that time, doth tell us, that in full Parliament, (*habito postmodum Concilio, coram primoribus Angliæ, statutum est,*) it was Enacted for a Statute, that *All Burghs, Castles, Forts,* &c. (*in quibus secularia solent exerceri negotia*) *should submit to the King & Parliament. Regis & Baronum suorum juri cedant.* And by vertue of this Act of Parliament, was the Castle of the *Devise* presently demanded; and at length yeilded: while the great Prelates neck, (or his Sons who had been also Chancellor,) was in the Rope to have prevented his Quartain, of which he died.

In the same Author we find much, of an *High Constable*; and several men, with that Title. One is *Milo*: who did lead the King, in Royal State; *cum honore, Regiam ad Aulam; ubi Cives fidelitatem Juraverunt*, &c.

Ere long, we find him charged with Treason, (so as is worth considering, for the *Militia*;)

and

and his Office conferred, on *Walter de Bello Campo*; *Wigornensi Vice-comite*. But discontents (that rose before) did now increase. And when the Oath of Fealty, was pressed on some; they refuse, and say, the King may take *their words*, if he please.

But for a *Bishoprick*, the Prelates perswaded a grave man, to swallow the *Oath*: and so he did; on much reluctance. *Maurice*, was his Name; Elected by the people; a *Clero & Populo*: being then presented to the King, by Bishops; Attesting his deserts and due Election.

Another Bishoprick is conferred on *Philip*, the Lord *Chancellor*; but *Consilio Baronum*. And a while before, the Abbot, was made a Bishop, at *London*; *petente Milone Constabulario, & favore Populi, utriusque Ordinis*; that is, the *Lords* and *Commons*; or rather the *Clergy* and *Laity*.

In *Huntingdon* we read of *Robert* Arch-Deacon of *Leicester*, about this Time, Elect Bishop of *Lincoln*; *Rege, Clero, & Populo, summo gaudio annuente*. And a while after, he shews us the King at *London*, in a full Parliament, disputing the grand question of *Appeals*; with the Romish Legate. For, such *Appeales* (saith he) had not been *used in England*, till *That Henry* of *Winton* the *Legate*, had cruelly intruded them. *Malo suo crudeliter intrusit.*

The Monk of St. *Albans* borroweth from him, and ſometimes repayeth, with intereſts. As in that Statute, for Priviledge of *Churches*, and *Church-yards*; with all the *Clergy*; ſo, that none but the Pope could abſolve, from violence done to ſuch, (in which they all agree:) he added alſo, another Act of the Parliament, that *Plowes* in the Field with Husbandmen ſhould enjoy the ſame Peace or priviledge; as if they were in a Church-yard.

His *Geffry de Mandevil*, (*Conſul*, or *Comes*;) was a very great man: *de magna villa*. For he ſpeaks, of his *Princeps Militiæ*; and of another, that was, his *Magiſter peditum*. But in *Henry* of *Huntingdon*, we find him, at length, clapt up in *Priſon*: but ſcarcely, *ſecundum jus Gentium*: *Rex cepit eum in curia ſua*; *ex neceſsitate magis*, *quam ex honeſtate*. *Hoveden*, hath of him, the like expreſſions; adding alſo, that from a *Baron*, he had been raiſed, to the degree of a *Conſul*; that is an Earl. For in him the *Earl of Flanders*, is *Conſul Flandrenſis*, and the *Earl of Anjou*, *Conſul Andegavenſis*.

This was he that come to be *Hen.* the 2d. who at his Landing, (being *Duke of Normandy*) *coyned money*; which paſſed here, by the name of the *Dukes coyn*. Nor only he; but *Omnes potentes*, *tam Epiſcopi*, *quam Comites & Barones*, *ſuam faciebant monetam*.

netam. (and of this, *Nubrigenſis.*) Which may be compared, with the *Saxon* Laws, of King *Ethelſtan* and others. As K. *Hen. monetag. common.* In the ſame *Huntingdon*, we alſo read, that (by the Mediation, of *Theobald* of *Canterbury*, and *Henry* of *Winton*;) the King was ſo reconciled, to this Duke and Earl *Henry*; that they never more diſcorded, (alſo that the Duke, was made, *Juſticiarius Angliæ*, next under the King; *& omnia Regni Negotia, per eum terminabantur.*) But in *Polydore*, we find this *Pacification*, made by Parliament: *Cujus Authoritate pactio facta eſt.*

Matthew Paris is ſo full of *Law Terms*, that I could beleive him, in this, to allude to the Law *Fines* and *Recoveries*. For at this peace, he telleth, how the Kingdom was again *Recovered*. And (after a digreſſion to *Merlins Propheſie*, in which the phraſe of *Vice-comites*, may be duly conſidered;) he concludeth, thus a War that had raged 17 years together, was now quieted by ſuch a *Time*, *hoc fine quievit*.

To which he adds, that famous ſtory of the Souldier, that in this *Vacation* made a Voyage to St. *Patricks Purgatory*. And by that occaſion, he relates, the beſt deſcription of Hell, or Helliſh Torments, that I remember, in any Hiſtorian of credit. With which may be compared;

divers.

divers others in the ſame Author. But that which is added, at the Souldier return to the King; may be added alſo to what is obſerved before, touching *Ireland's* dependance on *England*. For, the ſame Souldier was again ſent, by King *Stephen* into *Ireland*: to be Aſſiſtant, as an interpreter to *Gilbert*; who had a grant from hence, to found an Abbey in *Ireland*. Whither he alſo carried this Souldier, ſpeaking Iriſh; and with Tears, he would often relate, his Voyage to Hell. Which is ſo recorded and aſſerted by divers Religious men.

To K. *Stephen's Militia*, we may alſo refer that, which ſo many Hiſtorians Record, of his damning the *Hidage* or *Danegeld*: Which yet was not his Act, but the Parliaments; that did Elect, and create him King. We muſt diſcuſs it more fully ere long; but now, for *Danegeld*, we may aſſert it to be expreſſed, in his very Coronation Oath: on which, he was admitted.

One of the clauſes was, that he ſhould, for ever deſiſt from that, which had been paid to ſome of his Predeceſſors, *ſingulis annis*. And *Wendover*, or *Paris* expreſs no more. But in *Hoveden*, and *Huntingdon Dane-geld* is expreſly ſpecified, which both affirm to be then at 2 s. the Hyde. They agree alſo, with others; That this

this was again specified in Parliament at *Oxford*: Where the King did again confirm his Coronation Oath.

Matthew of Westminster doth also Record that of these promises or Oaths he made a *Charter*, which seemeth to be that Charter which the great Reporter in his 8th. part affirmeth to be yet found in an old *MS. de antiquis Legibus*. And that the said Charter among divers other things doth expressely confirm the Laws of K. *Edward* and of K. *Henry*.

Nay the Monk of St. *Albans* affirmeth that in Parliament, *Congregatis Regni magnatibus*, he did there solemnly promise to *meliorate the Laws*, or make them better as they should desire or require, *juxta voluntatem & Arbitrium singulorum*; which we may consider again upon occasion.

Nor must I omit that much of this very Charter is yet to be read in Prut; in an old Monk that lived in King *Stephen* Time; and those particulars for confirmation of all good Laws; and in special those of King *Henry*: with divers other things that are worth perusal. It is in the Monk of *Malmsbury*; but a little after the Letters written to the Pope about King *Henries* death; confession, absolution and *Anointing* by the *Elders*; according to what was let to the

Church

Church, by the Apostle St. *James*: as in those Letters, is more fully expressed. Which may be added to that, before, of the *Church Elders*.

Polydore telleth us that in full Parliament at *Oxford*; King *Stephen* did abolish that, which had been oft exacted, for *Hydage per singula jugera*: and that he *intreated* another Parliament, to carry on that War, which by their Advise and Councel had been undertaken, in the Name of *Common Wealth. Reipublicæ Nomine, vestro cum Consilio tum Consensu, susceptum est*: and his desire to them was, *so to act in Person; that the People might not be burthened with Taxes.*

And at his end *Virgil* addeth that, *for all his continual Wars; he did exact, little or no Tribute from the People.* So that the Parliament it seems, did wholly manage his *Militia.*

From a long Storm at Sea; we are now come, into a quiet Port, and a calm Haven, such were the Thoughts, Expectations, and Hopes of All; in *Henry* the 2d. We have his Laws in Print; in several places: and his Lawyers, known enough. For who needeth to be told of *Glanvil* in his Reign; of whom before: and much I might add, from divers others besides *Hoveden.*

Who by occasion of that Jugdes Name; hath not only given us a Copy, of *St. Edwards* Laws; but

but hath also, asserted their confirmation by K. *William*, (as I should before;) upon the Oaths of chosen men from every County, (sworn, as strictly as I remember any to have ever been;) with additions also of some emendations added by King *William*; *ad Utilitatem Anglorum*.

These Laws he saith, were compiled (or *conditæ*) by the said great *Glanvil*; who (in *Henry* the 2d.) he stileth; *Summum Justiciarium totius Angliæ*. And for this Kings confirmation of the good Laws of *H.* the first, we need no more than what we find in him (and all other Historians;) of the grand contest upon that occasion; between the King & *Becket*, Son to a *Saracen* or *Syrian* Woman, yet a Citizen of *London*, (and his Fathers Name was *Gilbert*.)

Favourite at first he was to *Theobald*, (of whom before:) by him commended so, that he became Lord *Chancellor*. But at his Patrons Death, being chosen to succeed (in *Canterbury*:) he resigneth up the Seal at taking orders: and in this both *Wendover* and *Matthew Paris* add to *Hoveden*, who in *Becket* is the largest.

Polydore agreeth, that his former perferment was, to be *Arch-Deacon*, to that Sea: to which he makes the Office of a *Legate*, to be then entailed; ever since Lord *Theobald* did fetch his *Pall* from *Rome*.

But the great quarrel was about the confirmation of K. *Hen.* Laws, (of which before.) They touched all the Clergy: So, that once reading of them, was enough to make the Pope condemn and Ban them all. In a great Councel or Parliament the King did ask, (they say petitioned the Church,) that all would agree to keep the Laws of his Grandfather, *Henry* the first.

Becket with some reluctance did consent, without his *Salvo*. But again repents in Parliament, at *Clarendon*: 'tis clear as well for Commons as for others. *Congregato Clero & Populo Regni, apud Clarendun.* And again, the Lords beseech the Prelate that he would vouchsafe to come and say before the King and *Commons, coram populo diceret*, that he would receive and admit those Laws.

He doth consent and comes into the House, and frames his lips into a *Content*: the King is glad and bids the Lords retire, and bring those Laws from the Records; that all might be perused and agreed. Somewhat more he meant: for when the Lords returned with those Rolls, the motion was that all should set their hands, or Seals in witness of agreement. But at this,

The Prelate startles and recoyles again, and riseth high or foul in Language; So withdraws in greatest discontent. Ere long, we find him

out

out again; at leaſt, he would be out; For now he ſueth for a Paſs to *France* he meant the Pope. I muſt not here omit the courſe the King did take to ſtop him. One there was that did complain, he had been long in ſuit; in ſome inferior Court of *Becket*, yet he could not get his right: and therefore was at length enforced to ſome other courſe and Court. For which his way was firſt to falſifie the Prelates Court by Oath, according to the Cuſtom of the Kingdom: and of that we ſpake before in *Writs of Right*; and *Tolts* or *Pone's*; to remove them to ſome higher Court. This ſeemed but a petty Caſe that happen'd every day, ſo that the uſual Writ hath ſuch a clauſe, that if the *Baron* did not, then the *Sheriff* ſhould. And if the *Sheriff* failed (in the *County Court*,) then *Bench* muſt help.

But this was now enough to give a pauſe and check to that great Prelate. He muſt ſtay and plead it out; at length he finds the formal Oath (to falſifie his Court) was made upon Paper (or a Service Book:) whereas the Law required, that the Oath ſhould be upon the Holy *Goſpels*. This would not ſuffice, but Parliament, (at leaſt the Barons, and the Tenants *en Chief* were ſuch;) did put the Prelate into *Miſericordia*.

He doth ſtruggle and attempt a Writ of Er-

rour or the like; (*Judicium illud falsificare*;) but he must submit and is amerced at 500 l. he cannot bear it: falleth sick, but soon receives another summons.

For he shall have load enough, and now must give account of all his former Bailywick. He seeks delay, and would be *Essoyned*, *de Malo lecti*, and instead of *Knights*, two *Earles* are sent to view him, whom they find in Bed, but give him respite only till the morrow.

This bringeth a Case of Law to mind, *Essoyned of sickness* cannot *Rise*; without a *License*. If the Knights (that come to view him) find him not, or out of Bed it is *default*; Of which in *Bracton*, *Fletu*, *Hengham*. And his Learned Commentator addeth a pretty Case in *Rich.* the First.

The *Abbot* of *Crowland* sueth the *Prior* of *Spalding* for entring upon his Marsh. The *Prior* Pleads, he entred as upon his own *Fee-simple*; and doth offer 40 Marks for grand *Assise*: and so the *Mise* is joyned; and the *Right* doth lie at stake.

The *Abbot* is *Essoyn'd de malolecti*, and the Writ goes out to the *Knights*. But while one was coming to view him, he doth rise and cometh towards the Court; so the Knights Certificate is, *The Abbot was not in Bed*.

On long debate, the judgement was, that upon

on *defaut* the *Abbot* (yet in Poſſeſſion) muſt ſubmit to yeild the *ſeiſin* to the *Prior*, whom he ſued. See the Statute of *Marlbridge*, and the 2d. of *Weſtminſter* cap. 17.

But *Becket* had Law enough to make him Riſe, and come to the Court in fear and diſcontent, but his Right hand is ſo faſtned to his Croſs, that it could hardly be forced from him, who did ſtruggle for it. But his ſoreſt preſſure is an heavy Action of *Account* for all he had received as Lord Chancellor.

He pleads Diſcharged. And that at his Election *Henry* Son to him, that had ſuch intereſt in the Kingdom, (*cui Regnum adjudicatum fuit*;) and all the Barons of the *Exchequer*, and *Richard de Lucy*, *Juſticiarius Angliæ*, did declare him free: *quietum Deo & Eccleſiæ, & ab omni exactione ſeculari*, &c.

But his concluſion (*Nolo amplius, Nolo inde placitare*;) coſt him dear. For when the King had this, he knew his way and ſaid to the Parliament, (*ſed Baronibus ſuis*) do me ſpeedy Juſtice on this man. *Cito facite mihi Judicium de illo, qui Homo meus ligeus eſt: & ſtante Pace in Curia mea recaſat.*

So they did retire and being alone without the King; *exeuntes Judicaverunt*. And they did adjudge him to Priſon. But he eſcaped before his

his Commitment: although ſome, (that ſaw him going,) cryed Traytor, ſtay, and take thy Doom, By ſtealth he got to *Sandwich*, thence to *France* (by *Flanders*:) where he found the Pope.

I do not know that he talked much, of refuſing to make his account. But his grand complaint was, that he was preſſed to conſent to ſuch injurious Laws, as thoſe (which he brought to the Pope,) of King *Henry* the Firſt. Which were ſoon damned, notwithſtanding our Kings Embaſſadors.

But *Writs* were ſent abroad to the *Sheriffs* and *Juſtices*, for ſeizing all, belonging to the *Arch-Biſhop*: for attaching Arms that did appeal to *Rome*; or bring any Letters of Excommunication, or attempt a Voyage beyond Sea without a Licence. And for ſequeſtration of the Peter pence till further order.

If that I have cited already, were not clear enough for Parliament in theſe; we may have more from *Wendover* or *Matthew Paris*, where we are expreſly told, that the great meeting at *Clarendon* (of which before) was made up of a Lord *Preſident* (*de mandato ipſius Regis*,) with *Arch-Biſhops*, *Abbots*, *Earls*, *Barons*; and to theſe, alſo are added *Proceres Regni*: which may here ſpeak the *Commons*, as in *Hoveden*, *Populus*; ſo often expreſſed,

ſed of that Parliament. For it may be remembred, that *Virgil* himſelf doth acknowledge the *Commons* alſo to be very frequently called to *Parliament*; from the time of King *William*, as we may read in his large deſcription of our Parliaments in *Henry* the firſt. To which alſo (for this Parliament at *Clarendon*) we might cite very many Hiſtorians, beſides *Gervaſe*, and the *Quadrilogus* (or *Becket's Life* by 4 cited on *Eadmerus*; and in *Janus*,) from which there is much to be added to that in *Matthew Paris*.

Where it is alſo aſſerted that theſe Conſtitutions of *Clarendon*, were not only agreed, but expreſly ſworn by all the degrees of Parliament. *Epiſcopi, Clerus cum Comitibus & Baronibus ac Proceribus cunctis Juraverunt*, &c. as alſo that theſe were but a *Recognition* or *Recordation*, of ſome part of the Cuſtoms and Liberties, *anteceſſorum ſuorum*. Of which alſo *Florilegus* thus *coram lege & Magnatibus facta eſt Recordatio regiarum Libertatum & Conſuetudinum*; *Cui Archiepiſcopus aſſenſum non præbuit*, &c. Nor would it be hard to ſhew very many if not all of them, agreed in Elder times. Of *Foreign Appeals* we ſpake before, and the Writ *Ne Exeas Regnum*, is as old as *Rufus*; if we may beleive *Polidore*, or better Authors.

To that of *Appeals from Eccleſiaſtical Courts*, (to the

the King or Delegates ;) I can add very little, to what is in *Caudries* Case; in the 5th part of the great Reports, with the preface to the 6th.

That against Excommunication of the Kings *Tenants*, (or as the Elder Law was of the Barons) is cleared enough in the Notes on *Eadmerus*, from the first *Norman* Records. To which may be added a Law of *Henry* the first, of the Wills or Legacies of his *Barons*, *vel Hominum*; with which the Learned *Janus* compareth an Old Law of *Canute*; and toucheth the power of the *Ordinary*, in Case of *Intestates*; which is prescribed from most antient *Parliaments*, but the Original doth not appear.

I must not spend time in heaping up the many proofs of Parliament, for the *Assizes of Clarendon*: which were again, renued at *Northampton*. *Hoveden* is large and clear for them all, and for the *Circuits*, and *Judges in Eyre*, by full Parliment: *Communi omnium Concilio*. But the *Mirror*, and those that write of *Alfred* will afford us these in many older Parliaments.

From that *Assize of Arms* for every Fee, we may learn to expound the *Statute of Winchester*, and others speaking of a former *antient Assize*: which is here found at large. To which I may add, that what is here spoken of the *Justices* pre-

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ſenting to the King; may be expounded to the King in Parliament. As is fully expreſſed, not only in *Fleta*, but in the ſaid *Statute of Wincheſter*, *The Juſtices aſsigned, ſhall preſent the defaults at every Parliament*. The defaults of *Arms* for the *Militia*. And by this time I ſhall not need to ſpeak of *Eſcuage* in *H.* 2d. aſſeſſed by Parliament; for *Tholouſe*, *Wales* and *Ireland*; of which *Gervaſe* the red Book in the *Exchequer*, and *Matth. Paris*, with the Notes of *Hengham*. To which I might add *Matth. of Weſtmin. de unaquaque Carrucata terræ totius Angliæ, quatuor denarii Conceſsi ſunt & collecti*, for the Holy Land. But when he had the offer of the Kingdom of *Jeruſalem*; *Convocato Clero Regni, ac Populo*, it was rejected *Concilio univerſo*? as the Monk of St. *Albans* ſpeaketh.

Of K. *Rich.* Coronation, and his Oath before the Nobles, *& Clero, & Populo*, *Hoveden* is very large. From him it may be found in others. And of the Jews in thoſe times, to whom he was a Friend (as his Charters ſhew;) and very ſorry for their ſufferings; who did help him much for his Eaſtern Wars; as ſome relate with *Polydore*. See Mr. *Selden* on *Arundeliana Marmora*, his great Charter to the King of *Scotland*; of many Liberties, (for which he did recieve 10000 Marks;) but ſtill retaining the antient Dues, to this

Crown is every where. For which I must not forget what was before in *H.* the 2d. *Malcolm* became his man 'tis said, and did him *Homage*: but on some disgust he was not Knighted by our King; as was wont. (and *Matth. Paris* addeth also, that the *Scottish Kings Horse*, was the *English Marshals Fee*, at such a Knighting,) But *Hoveden* telleth us that about two years after, the same King came again, and was then *Knighted* by King *Henry*.

Of his Parliaments and their Power, in War and Peace; I might cite very clear proofs. The League with *France*, was agreed by both Kingdoms, *& Archiep. & Episcop. in verbo veritatis*, (that was the mode in those days for them, as for the Lords since, *in verbo Honoris*;) *& Comites, & Barones Regnorum, præstito Sacramento, juraverunt.*

And his *Sea Statutes* were made *de Communi proborum virorum Consilio*, as the Charter it self expresseth it in *Hoveden*, *Wendover* or *Matth. Paris*. Who doth add, that *per Consilium magnatum*, there were made, *Justiciarii super totum Navigium Angliæ* &c. Which with divers Records of *H.* 3d. may be added to the *Admiral*, or Saxon *Aen mere eal*; Over all the Sea.

How the Lord *Chancellor* (being left the *Custos Regni*,) did on pretence of the Kings Warrants,

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pole the People; is at large in *Hoveden* and others. But in the Monk of St. *Albans* we may read, that er'e long in Parliament of Commons alſo, (*aſſenſu Communium definitum eſt*,) it was enacted, that *none ſhould ſo domineer in England*; to diſgrace the Church and oppreſs the People. And that all the Caſtles which the ſaid L. *Chanc.* had committed to his Clients, (or diſpoſed without the Parliaments aſſent,) ſhould be preſently delivered up: and in particular *the Tower of London*; where he then was, and was glad to yield, and make his peace, with much ſubmiſſion for to ſave his Life.

For which alſo *Polydore Virgil* is worth peruſing. And in him we alſo find the *North* committed to the Biſhop of *Durham*; (who of an *old Biſhop*, was made a young Novice Earl, but he paid dear, for his honour:) and how the *Chancellor* excuſed himſelf by the *Kings Command*. As if (ſaith *Polydore*) *the Kings Command, might diſannul the Law*; *Quaſi fas eſſet, jus omne principis juſſu reſcindere.*

Of the Kings Voyage to the Eaſt, I ſhall not ſpeak; nor of the famous Propheſies he found touching *Antichriſt*, and the *Revelation*. They are in *Hoveden*, beſides all others.

Where we alſo find him ranſomed by *Com-*

mune assent; in special of the *Clergy*. And for this *Walsinghams Neustria*, may be added to others in the Road, and at his return, he is again Crowned before the *People* as well as the *Lords*; *& Consilio Procerum.*

Yet *Polydore* (with others) is bold to charge his Reign with great exactions on the *Clergy*, in special for his ransome: but himself yeilded, that the King did send, the Bishop of *Salisbury* into *England*, that by the consent of Parliament; *Regii Senatus Authoritate*; he might get his Ransome.

And himself yeilded that at his return there was a Parliament; wherein the King thanked his People for their Faith to him, and for that they had helped him in his Wars and Imprisonment. And that *Ejus Nutu, Archiep. Cantuar.* was conferred on the said Bishop of *Durham*: and that the *Chalices*, &c. were again restored to the *Churches*; and that the Laws, with weights and measures, were then also corrected or amended.

K. *John*'s Election must be discussed in another place. Of his *Military Aids*, *Paris* with *Wendover* is clear, that they were granted in, and by Parliament. *Convenerunt ad Colloquium apud Oxoniam, Rex & magnates Angliæ; ubi concessa sunt Regi Auxilia Militaria, de quolibet scuto duæ marcæ & dimidium.* Nor

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are the Records wholly loſt of his Parliament, ſummoned about a War with the *French*, (or rather defence againſt them:) and his *Writs* are known enough. They ſpeak conſent of Parliament, *proviſum eſt de communi aſſenſu Archiep. Comitum, Baronum & omnium Fidelium noſtrorum Angliæ, quod novem Milites per Angliam, inveniant decimum bene parat: ad defenſionem Regni.* Beſides the Rolls, this is found in the 9th. part of the great Reports, and in divers others. His Charter is now ſo well known in Print; that I need not cite any clauſe thereof. No not that ſo clear for the *Militia*, *Nullum ſcutagium vel Auxilium ponam in regno noſtro, niſi per commune Conſilium Regni noſtri.* Yet I may add, that the Aides, there excepted and called *Reaſonable*, (being ſuch by Common Law) were afterwards aſſeſſed and aſcertained by Parliament.

For which the firſt of *Weſtminſter* may be compared with the *25th.* of *Ed.* 3d. and in the *14th.* of that King, his Aides were remitted by Parliament, becauſe (for his Wars) he had taken other Aſſiſtance than was due by Law: which was much excuſed by himſelf, and divers other Kings.

And for this I might cite the *48th.* of *H.* 3d. the *25th.* and *31th.* of *Edw.* 1ſt. the 10, 11, 12, and

and 17 of *Edw.* 2d. the 19*th.* and 20*th. Edw.* 3*d.* who did *buy* Souldiers rather than *Preſs* them; as the *Roman Hiſtorian*, of the declining times, of that *Empire*. Of the *Barons Wars*, I muſt not ſpeak a ſyllable, they do deſerve a diſcourſe by themſelves: and it may be poſſible ere long to ſee it. Now I ſhall only obſerve, that, our *great Charter* was rather the *Cauſe* (or occaſion) than the *Effect* of *thoſe Wars*. For, had it been ſo kept as it was made; the Crown might have reſted in peace enough.

They which perſwade others that this *Charter* was firſt created by King *Henry*, and extorted from him, only by a prevailing *Sword*, ſeem not to conſider ſo much as its *Title*, as it now is printed: where we find it granted, in his 9*th.* year. Although it was ſo ill performed, that it needed confirmation afterwards.

Matth. Paris is very clear and plain in this, that it was wholly the ſame or exactly agreeing, with that of K. *John*, *& in nullo diſſimilis*. Nay he ſpeaketh of K. *Johns Charter*, *quæ ſponte promiſit Baronagio Angliæ*: and again in K. *H.* 3*d. ſponte liberaliter conceſsit*. And the *Popes Letters* tell us, of K. *Johns Charter*, granted moſt *freely*: *Liberaliter ex mera & ſpontanea Voluntate, de Communi conſenſu Baronum ſuorum*, &c. Beſides the very words,

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in one of those *Charters*, *spontanea & voluntate nostra dedimus, concessimus, pro nobis, & Heredibus nostris, Libertates has subscriptas.*

Nor were these new priviledges, then *first* Created by him. But the *old Rights of the People* by long and ancient Custom: as we may find at large also in *Wendover*, with *Matthew Paris*, where they are not only, *Antiquæ Leges & consuetudines Regni*; but we are also told, they did present, the *great Charter of H. the first*, with his Laws and St. *Edward's*. And to these the *Barons* sware: as the King had also done before. For so we read their Covenant was, that if the King would break his Oath, *a juramento proprio resilire*, (which they had some cause to believe or suspect, *propter suam duplicitatem*;) yet, they would keep theirs; and would do their best, to reduce him to keep his.

Virgil is also clear in this, who telleth us, K. *John's* Troubles, and proceedure from his not restoring K. *Edw. Laws*, as he had promised. And that the Barons urged him, *ut promissas tandem aliquando Leges daret*, and again they ask for their *Antient Customes*; *vetera instituta, quibus olim Reges Pop. Angl. bene rexissent*: and the close is, *quæ ille prius recepisset se sanctissime observaturum.*

And for *Henry the Third*; the same Author affirm-

affirmeth, that (instead of his granting ought, that was new;) the People granted him that grand Prerogative of *Wardships*; (which that King accepted, with many thanks) adding also, that the People did not intend it for *his Successors*.

But of this I may speak in another place, I shall now only adde, that if there be not yet enough said, (from all the Saxon Laws, and Histories, with the first Norman Confirmations and Explications;) to assert the Great Charter, to be more Antient (for its matter) than K. *Henry* or K. *John*: I shall only desire those that are yet unsatisfied, they would please to peruse the 2d. part of the *Great Institutes*, or at least so much of it, as speaketh of *H.* 3d. and *Edw.* 1st. And it may be they will not wonder that at the Prelates motion, that Bastards might inherit: the Parliament at *Merton*, cryed out so loud, *nolumus Leges Angliæ mutare*, &c.

To which also (besides the late Declarations of this Parliament, and the Petition of Right,) may be added, the Learned arguments of those Grave and Honourable Judges; to whom we shall ever owe so much, for standing up (in an evil day,) for Truth and Common Justice; in the Case of *Ship-money*: Sir *Richard Hutton*, Sir *George*

George Crook, and Sir *John Denham*; with the truly Noble *Oliver St. John* Lord Chief Juſtice of the Common Pleas. Their Arguments are now in Print by publick Command. Nor may I preſume to add a word in that ſubject.

Nor ſhall I ſpeak of the times following the great Charter; which was confirmed more than thirty times in full Parliament: with many ſpecial Proviſions for the *Militia*. It being moſt juſt and reaſonable, that what did ſo much concern all, ſhould be conſidered by all: *Quod omnes tangit, ab omnibus approbetur.*

Which is one clauſe in the Writ of Summons to Parliament (about a War with *France*;) in *Edward the Firſt*. Which ſeemeth to ſpeak a neceſſity of Parliaments, for matters of War. Not only for Money, (as ſome have pleaſed to ſpeak:) or at the Kings choice to call them, if he pleaſe. The Writ ſpeaks an Act of Parliament: *Lex juſtiſsima, & provida circumſpectione ſtabilita*; not let at looſe to the Kings pleaſure: but as *Forteſcue*, or long before him, the old *Modus of Parliament*, maketh it neceſſary for the King, and his Duty to Call a Parliament in all ſuch Caſes.

Nor ſhall I need to add what *Paulus Jovius*, *Froiſard*, *Comineus*, *de Serres*, and the Duke of *Rohan*, with many other ſtrangers have obſerved of our Parliaments, in this; which is the Law of Nature, rather than of *England*.

For as in the Heavens or great World we did before obſerve *Mars*, (or the Genius of War,) to be there placed immediately under *Jupiter*, (the great Councel;) and not under the *Sun*. So in the Microcoſm or little World of *Man*; we find both *Spleen* and *Gall*, within; *Hands* and *Feet*, without; at a good diſtance from the *Head*: and never joyned to it; but in Monſters. Yet it is true that ſome Creatures have Horns on their Heads, but they are *Beaſts* and not *Men*. Much leſs *Kings*, I hope.

But did we Labour, Toyl, and Sweat ſo much to keep a little *River* in its bounds; that ſo we might be drowned, by the boundleſs *Ocean*? Or be ſwept away at once, by a deſtroying and devouring *Deluge*? Did we ſcruple at a little *Gravel* or a Pebble, that we might be cruſhed by a *Mountain*? Would we ſtrain at a *Gnat*, that we might be choaked by a *Camel*? or be ſwallowed whole by *Behemoth*?

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It may not be, at leaſt, it may not ſeem enough to quiet trembling minds, to ſay, or prove by arguments, there ſhall be nothing done but what is juſt: except we alſo ſee or know the *way*, and *means*, and uſual *courſe*, our Governours will pleaſe to take; in doing that which may, or is, and ever ſhall (I hope) be *juſt*. The *way* muſt be both *Right* and *Clear* as well as is the *End*. And of the two; Unjuſt and Arbitrary Power, doth ſeem to be in *Proceſſe*; or in *ways* and *means*; much rather than in *Ends* or *Things*, that be effected by it.

Sure it was, at leaſt it might be, good; to build a gallant *Fleet of Ships*; and ſo it might be *juſt*, that each ſhould contribute, a part to ſuch a publick work. Nor was it only that, which then was taken from us, for a Ship; that made us ſigh and groan, and cry, or fear our Ruine; or a univerſal deluge of Oppreſſion. But it much or mainly was we did not ſee the *way*, or *mean*, or *Legal Proceſs*, which the Court did take, in Taxing, or Aſſeſſing ſuch a Place, a County, or a Perſon. And it was but thus in *Loans*, and ſo in divers if not all, the things, we ſo abhorred in the Crown: the thing, did not ſo much diſpleaſe as did the *way*, or *means*, to ſuch or ſuch an *End*.

I need not ſay how curious, or how ſcrupulous, and tender ſtill our Laws have been; in pointing out the *Way* as well as *End*: the *Proceſs* in the Courts of Juſtice; as the *Final Judgements*. So that indeed the very Form, and Life, and Power, or Subſtance of the juſteſt Laws, doth much conſiſt in Proceſſe: which by ſome may be thought a ſhadow, or a Ceremony; leſt at pleaſure for a bluſtring Wind, or any furious hand, to ſhake as much, as long as it ſhall pleaſe. And then to *ſalve* it up, by ſaying to the Root, *We mean you Good; and do but lay you bare, that ſo you may the more behold, and more admire our Juſtice in the End: when all the Boughs and Branches ſhall be gone, that do but hinder all your Proſpect.*

I muſt but *Touch* and glance. There is a *Trinity* which all our Laws do ſeem to Worſhip here on Earth: *Eſtate*, *Liberty* and *Life*.

Of all Eſtate, the *Dower* of Widows hath the greateſt priviledge. For which the Comments upon *Littletons* firſt and fifth, with the Statutes of *Merton*; and ſome clauſes, of the great Charter it ſelf, for *Quarentine* and Dower, are good gloſſes, on the *Saxon* Laws; or thoſe already touched: and I ſhall not add one ſyllable.

ble. All Estates have priviledge in Law; and all Amercements must be such, as may consist with mens Estate; from *Alfred*, *Edgar*, *Ethelred*, *Canute* or *Edward*, it did come to *Henry* the first; and thence to the *Great Charter*. Where the Law is plain and clear. *No Free man shall be Amerced, but according to his Default and Estate: Salvo sibi Contenemento suo.* Which is so branched, that it reacheth to *Villains* also; though it speak at first but of *Free-men*.

Hence the Name of *Amercement*; because it was and ought to be an *Amerciament*; or a *merciful Fine*. In which the *Saxons* went beyond us, in their *Weregylds*, and *Diverse Wytes*: for which *Eleta*, may be a Comment to the Laws of *Ethelstane*, and others of the *Saxons*.

All this for *End*: but what must be the *Way*? How shall it be imposed: so that it may as it should be *merciful*? 'Tis *misericordia Regis*; as the Laws and Books do speak: but the King doth not, may not Fine, or Amerce any, but in and by his Courts of Justice. So that to render ones self, to the Kings Judgment, is to no effect; and so adjudged.

For as the *Father*, *judgeth no man*; ſo the *King*, (who is or ſhould be *Father* of the Country;) but he hath committed all judgment unto *Men*, that are our Fellows, (*Pares*,) in the Courts of Juſtice. VVhere indeed the *King*, did ſometime ſit in *Perſon*; yet the *Court* did Judge; and not the King; as *Forteſcue* doth plainly tell us. And the Judgment ſtill is entred from, and by the Court, (and not the King) *Ideo conſideratum eſt per Curiam.* And ſo the great Charter ſaith, we will not go upon him; *nec ibimus nec mittemus*; but by Legal Judgment of his Peers; *vel per Legem Terræ*: and of this laſt clauſe I never ſaw a fuller Comment, in a few words, than in Mr. *Seldens* Notes, on *Attaint* in *Forteſcue*. But of all *Judgments*, to be made by *Peers* ſomewhat was ſaid before in *Henries* Laws, and more again ere long.

And for *Fines* by Courts of Juſtice (not by the King,) and *Amerciaments by Peers*; beſides the Comments on *Magna Charta*; there are divers Book Caſes cited from *Henry* the fourth, *Henry* the ſixth, *Richard* the third; in the fourth part of Inſtitutes, *Kings Benth*; To which may be added *Greiſlies* Caſe, in the eighth part of *Reports*. And the firſt of *Weſtminſter* doth add

to

to the great Charter; or at least explain it, in this. But the *Mirror* will tell us, it was an abuſe, not to expound it, ſo largely before. And although the VVrit *de moderata miſericordia*, (in the Regiſter, and *N. B.*) be founded on the *Statute*; yet it ſeemeth clearly, but in affirmance of the *Common Law*. As appeareth, not only by *Bracton* and *Fleta*; but by *Glanvil*, who did write before the *Charter*: and by all the *Saxon* Laws, which were the ſamplers to King *Henry* the firſt.

But how tender our Law hath always been, in matters that concern *Eſtate* or *Liberty* may well appear by all the *Executions*, grantable for Debt or Dammages.

The *Merchant and the Staple*, *Statutes* are and were by *Statute*, not by *Common Law*.

They ſeem as ſweeping Rain, and Storms, that drive away the *Body*, *Goods*, and *Lands* in *Fee*, (at time of Recognition; or accrewing ſince:) but none in *Tail*, but during life of him that was the *Cogniſor*: Nor *Copyhold*, or Goods or Leaſes, for a Term of years; but only what was in poſſeſſion, at the *Execution* done.

They

They are fore-known, and therefore may be well avoided, by all ſuch as do not chooſe their own deſtructions. And there is a tender care in Law, not only of exact, and punctual Recognitions; and recording of them, but in caſe of forfeit, upon a *Certiorari*, ſued forth from the Chancery; and not before return thereof, a *Capias*, ſhall be granted (on the *Statute Merchant*) for the *Body* only; if it be a *Laic*: and if *Laic* be not found, (and ſo returned into the *Kings Bench* or *Common Pleas*;) then on pauze of divers months, the *exigent* may be awarded. But in *Statute Staple*, on the firſt Return of *Certiorari*, may the *Execution* iſſue forth, returnable into the *Petty Bag*; of all it ſeems the worſt, in this. But the *Merchants* Court, *Æquitatem ſummam deſiderat*: although a kind of *Peepoudres*; *as Bracton* and the Notes on *Forteſcue*.

Upon a *Recognizance* a *Capias* doth not go; before a *Scire Facias* be Returned into the *Chancery*. Then a *Capias* or a *Fieri Facias* or an *Elegit*; at the choyce of *Cogniſee*; as in other Common Judgements.

And of theſe the *fieri facias* is the *mildeſt*, and the oldeſt, by the Common Law. It toucheth

Goods

Goods and Chattels only: such as are the Parties Own; not lent by, or Leased to another. For although the Sheriff find them, in the Parties Use and full Possession, as he thinks; yet may he be a Trespasser in taking such; and so may run the hazard of an Action; ere he be aware. Nor did the old *Levari facias*, seize the *Land*: but Corn, or that which grew thereon.

An *Elegit*, hath its Name from his Election, or his Choice that sues it out: Who so concludes himself from other Executions. This did come by *Statute*; not by *Common Law*: and toucheth *Half the Fee, and all the Goods*; but yet with *Salvo to Contenement*: he must not lose his *Oxen*, or his *Cattle* for his Plough; For then he cannot live and keep his Family. So Tender is our Law, for all Estates and Livelihood.

Nay this *Extent* must not be made by Sheriffs; (who may not divide a right;) but by a *Jury* of *Inquest*. And so must be Returned, and preserved on Record; (as the first *Capias*, with all *mean Processe* must,) or else, it shall be

nothing worth: as may appear at large, in the fourth and fifth parts of the great Reports; *Hoes* and *Fulwood*, with divers other Cases. And the second of *Westminster*, that giveth this *Elegit*, doth require both *Extent* of *Lands*, and prize of Goods to be *Reasonable*; that is by *Inquest* of Twelve and so returned of *Record*. As is cleared in the Commentator. See also *Littletons Parceners*.

A *Capias ad Satisfaciendum*, taketh the Body; but it is by *Statute* only: for it did not lye, by Common Law, in Debt or Dammages; but only where the Original Action, was for Forceable Trespass; *Vi & Armis*. Which is *Now*, crept into every Trespass. But of this Sir *William Herberts* Case, in the third part of Reports.

It may be forbidden again by Statute, as it was first granted: and that justly too for ought I know; if other course be taken, for the payment of Just and Reasonable Debts. For the *Capias* (as now managed,) is a great mischief, and divers times, to the utter ruine of the Debttors whole Family. And yet but very little advantage to the *Creditor*: except the *Debtor* escape

escape (and so the *Sheriff* come to pay the Debt;) or except he dye in Prison, and the Plaintiff get an *Elegit*, for the Debtors Goods at his death, or half his Fee-Simple, which he had at the time of Judgement or after it. For an Action for Debt or Dammages, doth but respect the *Person*; and the Law attendeth not what Lands were enjoyed at the *Original*, or before the Judgment. But an Action, brought against an *Heir*, may aim at *Land*, and so may charge it; although he Aliene while the suit dependeth.

Neither shall I need to add, that all these *Executions*, must be sued out, (For this is required by Law, except in the Kings Case:) within one year and a day after Judgment. Yet they may be continued after; and by a *scire facias*, be renewd or repealed; till the Judgment have *Full Execution*. But this was also given by Statute: and to this may the Debter plead, although he cannot plead against an *Execution*. Yet, it may be suspended by a Writ of *Errour* and Recognizance, according to the Statute of *James*, and 3 *Caroli*,

And without a Writ of *Error*, after judgement, if the Defendant have matter to discharge him of the *Execution*; ſtill the Law is open for him. And he may relieve himſelf by a Writ of *Audita Querela*. And in caſe of *Elegit*, as ſoon as the Debt is ſatisfied; the *Debtor* may enter on his Lands again: and if he conceive the *Creditor* ſatisfied by caſual profits he may bring a *ſcire facias*; upon which the Creditor may clear, how much he hath received of the Debtor's Eſtate.

Unto this occaſional diſcourſe, I ſhall only add that grand maxime of our Law, that *Executions* ought to be more favourable, than any other *Proceſs of Law* whatever: Of which the great Judge upon *Littletons Releaſes*, and the ſecond of *Weſtminſter* in *Edward the Firſt*.

And for Executions, for the *Kings Debt's*; reſtrained by the great Charter; I have little to add, to the Comment on the eight chapter of that Charter. But the twelfth of *Articuli ſuper Chartas*, hath afforded a Writ commanding the Sheriff to accept of *Sureties*: elſe an Attachment lieth againſt him; or the party may bring an Action againſt the Sheriff, that *refuſeth Sureties*.

It

It is a maxime in Law, that a mans Houſe, is his Caſtle: ſo that the Sheriff cannot break it open for an Execution. But upon a Writ of Seiſin or Poſſeſſion, the Sheriff, (and other Officers, upon ſuſpicion of Treaſon or Felony,) may break open an Houſe; and ſo alſo in common Executions, where the King is a party. But in all ſuch Caſes firſt the Sheriff muſt requeſt the door to be opened. And the *Firſt* of *Weſtminſter*, doth alſo require ſolemn demand of Beaſts driven away into a Caſtle or Fort; (which is a kind of *vetitum nomium* which may be regained. By *Withernam.*)

Which Caſe I cite the rather, becauſe of the *Militia.* : For in ſuch a Caſe the *Sheriff* or Bayliff ſhall not only force his Entry, by the *Poſſe-Comitatus* into ſuch a *Caſtle*; on the ſuit of a *Subject*: but it may alſo, come ſo far, that the ſaid Fort or Caſtle, may be beaten down without recovery.

And although it be ſaid, it ſhall be done by the Kings Command; yet it is well known and ſeen by experience, that it is, and always was by Order of the Courts of Juſtice: and for this *Semain's* Caſe, in the fifth part of Reports, may be

be very well added to the Comments on the *First of Westminster*. By which we see how much the very Forts and Castles or *Militia*, must be subject to the *Courts of Justice*: Not the King only, but in and by his Courts; especially the *Parliament*, that may Command, Controul and Over-rule, all other Courts.

How tender the Law is in Case of *Estate*, *Forfeit* by *Alienation*, I have touched before, much is to be added: Nay in the worst and lowest Estates by Tenure of *Will*, (of which somewhat also before, for a Fine *Reasonable*, &c.) as by *Copy*; where Alienation, and Wast against the Custom, with other Cases (in the fourth part of Reports,) may *Forfeit* to the Lord: but he cannot *Out his Tenant* at pleasure, (especially him that sweareth *Fealty*;) but the said *Tenant* may sue his Lord, or bring his Action of *Trespasse*.

For Offices *Forfeited*, by Bargain and Sale or Brocage; the Statutes are clear and just. To which may be added the Comments of *Littletons Estates Conditional*: as also for Forfeitures of Conditions.

It is expresly provided, by Act of Parliament, that no Sheriff or any other Person, do take or

seize

seize any mans Goods, (much less may he take his Lands;) for *Treason* or *Felony*; until he be duly convicted, or Attainted by Trial, Confession or Outlawry upon pain to Forfeit double; to the party grieved, nor is this only in *Richard* the third, but in the first great Charter, and before it also, as was touched before.

Among the *Saxons* none were *Outlawed* but for Capital crimes: we find it often, in the *Mirror*, and in such the Out-law might be killed, by any that met him; (as might any man, Attainted of *Premunire*, that vast Chaos of confusion; till Queen *Elizabeths* Time.) I do not find any outlawry below *Felony* till about the *Barons Wars*; and then it came not below an Action of Forceable Trespass, *Vi & Armis*.

But (in the Common Pleas) it came to lie upon Accoune, Debt, Detinue, Covenant, and other petty Actions: which the Mirrour would pronounce a most great abuse. But in *Edw* the third, there was some amends, in providing that none should kill an Out-law, but a Sheriff only with lawful Authority. Yet in inferior Cases, Land Issues might be sequestred, in the Kings Hands till Appearance, or Reversal. Only in

Trea-

Treason and *Felony*, it forfeiteth as much; as Attainder by Judgment.

But it may be Pleades and Reversed divers ways. And a Petty *Misnomer* or a misdate, is ground enough to Reverse it; by a Writ of *Errour*. And of this the Books are full. But *Nimin's* case is a criticism in Chronology. One of the Sheriffs Returns was dated on the 8th. of *July* in the second and third of *Phil.* and *Mary*; but it was declared, there could be no such day, but in the 2d. and 4th. year, (which was only, between the 6th. and 25th. of *July*:) yet this was enough, to Reverse an Attainder of *Treason*, by Writ of *Errour*. And in Favour of Life, our Law admitteth *Pleas* to Out-Lawries in Capitals; there where in other Cases must be brought a formal Writ of Error.

I cannot deny but even by the common Law, upon *Indictment* for Treason or Felony, the Goods and Chattels might be *Inventored*: but not seized as *Forfeit* till *Conviction*. Nor are Lands and Tenements Forfeit, till *Attainder* by Judge. And in case of *Appeal*, (which related no time;) that is only *Forfeit*, which is possessed at the *Judgment*. But upon *Indictment* (dating the crime,)

crime,) the Forfeiture will reach to the crime committed: although there be Alienation before Judgement.

But no *Forfeiture* before *Conviction*; no ſeizure before *Indictment*. And the Book of *Aſsizes* telleth us, the Judges took away a Commiſſion, from one that, under the great Seal, had power to arreſt and ſeize on Goods, before Indictment.

And how tender our Law was, in this for Eſtate, it may be ſeen at large in *Bracton* and *Fleta*; with the old Writ, not only in them, but in the *Regiſter* alſo; relating to the great *Charter*, forbidding all Diſſeiſin till *Conviction*. Yet it requireth the *Sheriff*, *per viſum ſuum & legalium hominem*, to Appriſe and Inventory, all the Offenders Chattels, but with a double *Salvo*, both for ſafe keeping them; (and for this *Security* was to be given by the *Bailiffs* or the Townſhip;) and for maintaining the perſon in Priſon, with all his neceſſary Family. *Salvo tamen eidem Capto, & familiæ ſuæ neceſſariæ, quamdiu fuerit in priſona, Rationabili Eſto verio ſuo.* Which was not only *Meat* but *Cloathing*, &c. as hath often been adjudged in *Edward* the

third, *Henry* the fourth and other Times. See the third part of Institutes, cap. 103.

It will not be long I hope before God ſtirreth up our Governours to Reform the crying ſins, of this Kingdom (and not only Gaolers) in our oppreſſing grinding Priſons. But the Heathen Moraliſt hath alſo told us, that *Divine wheels*, are alſo *grinding*, and will *grind* to *powder*, though they be ſlow in motion, as unwilling to revenge.

It is true, that Priſons ſhould be by Law, both ſafe and ſtrait Cuſtodies; nor ſhould they admit ſuch wandring abroad as ſome mens Mony doth procure. But although *Recoveries* on Record, (much leſſe Diſcents) do not bind men in Priſon, or conclude them for want of claim: yet upon motion Priſoners may and ought to be brought to the Court, in Suits or Actions againſt them, in caſe of Judgement, or where ever elſe, they ought to be in perſon preſent. And for this I may only referre to the Commentator on the *continual claim*, and the Caſes by him cited.

How

How unwilling our Law was to empair our *Liberty*, was touched before in the *Capias* on Debt. And although some latter Statutes do out-go our Common Law for Imprisonments; yet it is still received, for a general maxim in Law, that Prisons should be *Custodiæ*, not *Pœnæ*. And where ever any man is unjustly in Prison; the Law affordeth him, more ways of getting out than his Enemies had to get him in.

He may have an *Habeas Corpus*; and he may have a Writ *de Homine Replegiando*. He may have an Action of *False Imprisonment*. And may found an Action on the Great Charter: Or on it, may cause his unjust friend to be *Endicted*. And the Writ *de Odio & Atia*, was again revived though by Statute once it was forbidden.

And for these with *Bayl* by Judges or Justices; *Replevins* by Sheriffs, &c. We have the Judgement of all the Judges on *Articuli Cleri*: and the Comments on the great *Charter*; with the Statute of *Marlbridge*, and the *first* and *second* of *Westminster*. To which we may add the old Records, cited by the great Judge (on *Littletons Rents* and *Releases*;) for *Minors* and *Women with Child*, being excused from Imprisonment; not

only in Judgment on *Trespasses*, but an *Appeal* of Robbery.

More curious yet, and tender is our Law in all that toucheth *Life*. The *Mirror* is full of Complaints, that in his time, (and *Horn* did live about King *Edward* the first or rather the second for he nameth *Edward* the first:) some sins were made *mortal*, which were but *Venial*. As was *Rape* (with him) till *Edward* the first. But none (saith he) can make a Venial sin, *mortal*, by any Statute without consent of the Pope and *Emperour*.

And besides the *Saxon* Laws cited before, it is considerable that one the first *Normans* (called *Conquerours*) Laws so often confirmed since, was this, that no man should be *hanged* or put to *Death* for Treason or other crime: but lose his Eyes (or be exect) or some way dismembred that so he might be a living Monument and spectacle *Proditionis & nequitiæ*.

And of such there are many precedents, and of some *Banished*; but of very few *Hanged* or put to *Death* till about the Time of *Fitz-Osborn* cited before. And *Rape* was punished with loss

of

of Eyes, and exection (in *Bracton*) before the Statute of *Weſtminſter*. The ſecond but in *Glanvil*, it ſeemeth to have been as mortal as Murder or *Burning*.

From the Monk of *Malmsbury* we find that the Laws of *Henry* the firſt, did puniſh this and *Theft*, with loſs of Eyes and exection. But of this Mr. *Seldens Janus*, and his Notes on *Hengham*, ſhew the like Cuſtoms, continued in *Wincheſter*, and *Walingford*. *Hanging* is a late puniſhment for *Theft*, but ſome kinds of *Felony* did loſe the *Head*. And for *Adultery* the Woman of old did loſe her Ears and Noſe: but ſhe was burnt to Death, for killing her Husband; which *Cæſar* alſo obſerved of the Britiſh Gauliſh *Druids*.

But our Anceſtors allowed Bail, in Caſes very high and heinous; (we muſt ſpeak of *Treaſon* in another place,) that I ſay nothing of *Sanctuary*, *Abjuration* and *Clergy*; which was much larger than later Statutes have made it. But of this for the *Peers* in ſpecial (although they could not read) ſee the firſt of *Edw.* the 6th. and a later Statute of King *James*, for burning and whipping of Women who could not be *Clerks* as men.

It

It may be considered how our English mercy, may be continued some other way; if this be put down.

Which is very disputable, and the plain truth is, it was much at the *Ordinaries* pleasure. For they were not fined, for refusing to come before the Justices; who yet might reprieve the Prisoner, in case of such Refusal. And in Case of *Sacriledge*, it hath been declared at the *Ordinaries choice* to give or deny Clergy, for which an old Record of *Edw.* the 3d. is to be added to *Poulters* Case, with *Cawdries and Biggens* in the 5th. part of Reports.

This Case of *Sacriledge* is very considerable, being of all the most *forlorn*; for being denyed the Priviledge of *Sanctuary*, it could not *Abjure*. For this was Appendant to *Sanctuary*: whither the Offended did first fly and then Abjure.

By the old Law the person *Abjured* must banish himself, into a Forreign (yet a Christian) Country. But in *Henry* the 8th. he was removed to some other *English Sanctuary*. And in K. *James* if it is taken away; but what was allowin 35th. of *Elizabeth*, which remaineth yet, (without *Sanctuary*) for ought I know.

But

But to all Antiquities for *Abjuration* and *Sanctuary* in the *Mirror* St. *Edward's* and the *Saxon* Laws may be added, those of *Molmutius* the old *Britain* so long before Christian Religion. Of whom before, and yet again ere long.

Pain fort and *Jure* (the pressing punishment in case of standing *Mute* in petty Treason and Felony;) with *Martial Law*; are not so old, as our Ancestors *Mercy*. Yet in this they are merciful that they do not forfeit Estate; or Attaint, and corrupt blood as do other Capitals. But when shall we live, to have no need of that Novel *Pressure*, of Law *Martial*? When shall we again return to our Fore-fathers tenderness in all of Blood?

And that not only in *Pity* but *Policy*, both in this and other Nations. Who could else have made so great Title to many of their best slaves in *Gallies* and other employments. Which yet were not so good as our *Mines* might prove, if at least they were known how to be found, used and improved: As they may, and shall I hope ere many Ages more are lost, or worse than lost, in basing, spoiling, killing and devouring one another.

But of all little Islands near us, the *Isle of Man* (a very Famous place of old, and a distinct King-

Kingdom of it ſelf; though Appendant to this Conqueſt,) ſeemeth to be worthy of Enquiry, for their Laws and Cuſtoms. Which are very much, more compendious, than Ours, in ſome Caſes of Law, with all Pleadings and Proceſs.

In Criminals they have ſtrange Cuſtoms it being with them more Capital to Steal a *Pig* or a *Capon*, than an *Horſe* or an *Oxe*. One reaſon, is becauſe they love plain dealing, and be open-hearted, and they hate the man that Steals and *Hides*, much more than him, that doth it in on open way. I find it in a very good Author, and a great Lawyer; who reporteth them, to be induſtrious and religious, true and very free, from begging or ſtealing.

All Controverſies are determined in little time; with leſs Expence, Pleading or Writing. Yet in Caſes of unuſual Weight and Doubt; they have recourſe to Twelve they make and call the Iſlands Keys: being above their common Deemſters; whom they chooſe from among themſelves. Their Bargains are compleated and comfirm'd, by the giving and taking, of as mean a matter as a *Straw*: as of old alſo *per traditionem ſtipulæ*, from whence the phraſe of ſtipulation came. But theſe were moulded alſo by our Britiſh *Druids*; or of later date, our *Saxon Anceſtors*. I need

I need not ſpeak, how curious our Fathers were, in all their Proceſs, touching Life: The *Way* was ſtill as punctual, as clear, and plain, as was the *End*. They loved to be juſt; and to do juſtly.

Doth our Law condemn or give power to condemn any man, without *Hearing*; or due Summons to Judgment? I hope it never will.

A Great man of a good Name, ſtandeth upon Record, as by Parliament, condemned to Death; without *Hearing*; or Legal Summons. But there is a Bluſh, or a Vail of Oblivion, drawn upon it, by good Writers, as a ſtain and a ſhame, to the Parliament Rolls: yet as a juſt judgment on him, that had firſt moved, that another, might be ſo condemned. And he ſo periſhed, by that Law, which he would have made for others.

This ſeemeth alſo, to be written in the Law of *Nature*. And doubtleſs, the Sins of *Sodome* were as notorious to God, in Heaven, as any others, can be, to Men in Parliament. And yet, He would, and did, go down, to hear, and ſee, and proceed in a judicial way.

Nor would he condemn or execute, before he had, not onely, cleared his juſtice in himſelf, or to his Angels; but alſo to *Abraham*, *Lot*, and other Lookers on; that he ſtill might be juſtified, both when he judgeth, and is judged. For he ſtill did, and will, put his Actions on Man's Judgment.

This Proceſs alſo towards *Sodom*, is by many of our

old Lawyers, brought for the Pattern of our Laws; in that especially, that none may be condemned without a Legal Hearing. And in this, and divers other things, do *Bracton* and *Fleta* borrow much from the Laws of *Henry* the First.

And be the Matter of Fact never so notorious; yet may there be some Plea, that no man can foresee, or ought to forejudge before he heareth; for all men may plead necessity, or force upon themselves (as well as *Right* and *Law*) for any thing they do amiss. And for this, and other Reasons, the Law doth suppose all men to be just, or excusable, till they be Legally heard and adjudged. This Difference, there is between the Judges and the Law-makers: For these (they say) do suppose all men to be evil; but the Judges should suppose all men to be good till they be proved to be evil.

The Charge and Accusation, by the Law of Nature, ought to be clear, distinct, and particular, (with time and place, or other Circumstances) else the Party accused cannot discharge himself. *Universalia non premunt omnino, vel opprimunt*; Generals do not press at all; or else, they are apt to oppress.

The Witness, and the Evidence, must also be so clear, that these must condemn rather than the Judge, who sitteth as Counsel for the Party accused; that so, he be not oppressed by, or against Law.

And besides the Judges, (in most Cases, and in those

those also of Life, in *Scotland*) there is *Counsel* allowed by Law, which may, and ought to be heard in Particulars of Law, or whatever may be justly disputable; as *Treason* is by Statute. So, that of all Crimes, by expres Acts of Parliament, it ought to have no *Tryal*, but clear and plain, according to the course and custom of the *Common Law*.

In such Cases, therefore, should the *Judges* (both in Law and Conscience) sit, and be, instead of *Counsel* to the Party. This they owe to every Subject, though they had a special Obligation to the King.

Who, to his own *Rights*, (and therefore to his *Wrongs*) was an *Infant* in *Law*? and so expresly declared in the Old *Mirror*, besides other Books. His Politick Capacity never, but his Person ever in *Nonage*, or supposed so in Law: for it may be a *Child*, or a *Woman* not able to know the Laws, and therefore always had, by Law, a Legal Mouth assigned, in *Counsel* of Law: And so might any man else (of old) it seems, for matter of Demurrers, before Judgment; or for framing of Legal Appeal (by Writ of Error, or some other way) from any Judgment whatsoever.

It is also the Law of this Kingdom, and of Nature, that though there be no Councel assigned, yet may any, in a good manner move the Court to keep the Party from *Injustice*, or the Court from *Error*; as *Stamford*, and the 3d. part of *Institutes*, *Cap.* 2. 63, and 101. And in such Cases it may be excused (and not censured for rash zeal)

if ſome do, or ſhall appear, where or when, it may be thought they be not called.

Neither can the whole Parliament of *England*, I ſuppoſe, make any Court to condemn without lawful Accuſers, or lawful Witneſſes; which, by expreſs Acts of Parliament, is moſt eſpecially provided in Caſe of *Treaſon*, in King *Edward* the Sixth, and Queen *Maries* Reign: and *Tryal of Treaſon*, was moſt expreſly tyed to the courſe and cuſtom of the *Common Law*. Nay, in full Parliament of *Hen.* the VIII. it was declared, that Attaint of *Treaſon*, in, or by *Parliament*, was of no more force or ſtrength, than it was, or ought to be, by the *Common Law*: or this as good and ſtrong, as that by *Parliament*.

Nor can the whole Parliament, I think, by the Law of Nature, and right Reaſon, make any (Children, Ideots, or all others) whatſoever, to be, ſo much as Accuſers or Witneſſes; that I ſay not Indictors, Tryers or Judges.

By expreſs Acts of Parliament, in *Philip* and *Mary*; *Edw.* VI. *Hen.* VIII. *Hen.* IV. *Hen.* I. (for, to him, doth the *Mirror*, and his Laws, lead us as to a clear Cryſtal Fountain of our Law Proceſs;) none ſhould ſuffer, for Treaſon or other Crime, but by lawful Accuſers, lawful Witneſſes, before thoſe, that by Law, might receive Indictments; which, with all Enqueſt, are to be made, by honeſt, lawful, able men, Neighbours to the Fact.

And

And the Law of *Nature*, with the Law of the Kingdom, giveth any man leave to except againſt ſome for Accuſers, others for Witneſſes; and many for *Tryers*. It being the known Law of the Land, that one may challenge the *Array* (either the principal Pannel, or the *Tales*) as well as the *Polls*; and that the loweſt Subject, muſt be admitted, if he require it, to a perremtory challenge of divers, (it is now, in moſt Capitals, limited to 20. but in *Treaſon*, it is, as at Common Law it was, to 3 Juries, or 35) which may be challenged, without any particular reaſon. And the Law of Nature alſo ſeemeth to hear all Reaſons, and juſt exceptions, againſt any whatſoever.

Nor, ſhall I need to ſhew, how ſutable our Law is to the Law of *Nature*, in providing, that no *Infant*, *Ideot*, *Alien*, *Abjured*, *Perjured*, or *Attaint*, *Outlaw'd*, or in *Premunire* be of any Enqueſt, or *Jury*; eſpecially in Caſe of Life and Death.

And for *Tryers*, beſides all other exceptions; This was thought enough that any of them had been *Indictors*: which maketh *Forteſcu* ſo much to Glory in our Law, that putteth no man to Death, but by the Oath of four and twenty men.

I ſhould miſpend my time to ſhew it to be the great Law of the Kingdom, as well as of *Nature*; that none may be *Judg*, and *Parties*, in their own Cauſe; which may ere-long be found perhaps, to be the reaſon, of the *Three Eſtates*; and very much of our Common Law, which.

which is punctual in nothing more, than in providing for a clear distinction of *Accusers*, *Witnesses*, *Endictors*, *Tryers*, and *Judges*, especially in Cases of *Treason*; which upon divers motions, of the Commons in Parliament, have been so often Enacted and declared to be onely Tryable by the course and custom of the *Common Law*, and no otherwise.

Nay, in Parliament it self, and Parliament Men, there was, and for ought I find, always, the like course observed. For, in Case of a Peer, the Custom of the Kingdom is, to proceed by a special Commission, to one as Lord *Steward*, and 12 others (at least) for a *Jury* of *Tryors*; besides *Accusers* and *Witnesses*; and a formal *Indictment*. And all from Record to Record; or all this is Illegal, if it be onely by the House of Peers.

If Charge come from the House of *Commons*, they are as Indictors, being more than twelve sworn men, Trustees to the whole Kingdom; and Neighbours to the Fact, or Party, or both. To which also there must be a legal proof by lawful Witnesses, or else the Charge will not suffice.

And in such *Indictments*, from the Commons; the *Lords* are the *Tryers*; and the *King* may seem as the *Judg*; but in other Courts also the Judgment goeth of course upon the *Verdict*; and must be entred *per Curiam*, (as adjudged by the *Court*) although there be but one Judge; or tho' his Mouth pronounce not the Sentence. But we are not yet come, to debate the *King*'s Consent, to the *Lords*

Judg-

Judgment; an *Indictment* from the *Commons*

It is alſo to me very conſiderable how the Houſe of *Commons* could, or ever did *Indict*. I cannot deny them to have been a Court, and a Court of *Record*; (although ſome have ſeemed to queſtion it; and their *Records* are not ſo ancient as ſome others.) But I have not fully underſtood how they ever did make, or receive a Formal, Legal *Indictment*; when as they did not give a ſingle Oath, much leſs, Empannel a *Jury*, or *Enqueſt*.

Yet ſome, there be, that without a *Writt*, or any written Commiſſion, did and might do, this, *Virtute Officii*: But they be known, choſen, ſworn Officers of the Kingdom, for ſuch Purpoſes; as the Peeples Bayliffs, *Coroners*, *Sheriffs*, *Eſcheators*; and ſome Officers about the *Foreſt*; who, by the *Common Law*, did Summon and Empannel Juries.

But ſo did not the Houſe of *Commons*. How then, did they *Indict*?

Of all Crimes committed in the *Houſe*, they are, and were, ſo much, the *ſole Judges*, that they ſeldom uſe, to complain, much leſs to *Indict* any other.

And for any thing done *abroad*, I hope, they do not uſe to take *Rumours* and *Reports* (though from their own *Members*) to be ſufficient for, or equivalent to a legal *Indictment*, on Oath: Seeing their ſcarce is, or can be any Caſe ſo *notorious*, but it may be pleaded unto by ſomewhat of *Law*, or *Neceſſity*.

And although I ſhould yield the *Commons* to be the

Maſters

Maſters of the *Law* in making it; yet they pleaſed to allow others, to be *Judges* in their Laws.

And if they reaſſume this alſo, yet it may be more eaſie to judge of ſome *Law*, than of any *Fact*; at leaſt as it may be *cloathed*, ſo as a curious ſearch, or *Enqueſt*, may be requiſite to lay it clear and naked.

Neither can I ſee, how it may be neceſſary, to proceed againſt any by force, or illegal Proceſs, when it is eaſie, as well as juſt, to go rightly, as to do right.

For who can imagine a Caſe ſo dark and intricate, but it may be contrived ſo, that particular men may be *Accuſers*; and others *Witneſſes*? with a clear and real diſtinction between *Indictors*, *Tryers*, and *Judges*? moſt of all in Caſes notorious and evident. For in ſuch there may be leſs fear of the *Juries Verdict* againſt *Evidence*; or of the *Judges Sentence* againſt the *Verdict*.

Or if this ſhould happen in a Tryal; is there not a moſt heavy doom appointed by Law for all *Jurors* that *forſwear* themſelves, and goe againſt their Evidence?

Is there not a clear way of Relief, by Writ of *Attaint*? Is it not worſe than Death, to forfeit all Eſtate, and be thrown into Priſon; while both Wife and Children muſt be turned out of Doors and All? For his Houſe muſt be pulled down, his Ground be plowed up, and his Trees rooted out; with loſs of *Franchiſe*; and with a perpetual Brand of *Villany*. This is the *Common Law* for a *perjured Juror*; and that alſo in Petty Caſes: how much more might it be juſt in Caſe of Life and Death?

And

And for *Corrupt Judges*, our Law is very ſevere; altho' we have much loſt the Cuſtom of the Grand *Eyres* in this alſo; & King *Alfred* be long ſince dead; who hanged 30 or 40 more unjuſt Judges, than *Cambyſes* flead. And for that the *Mirror* may be a good Comment on ſome Paſſages, in *Alfred*'s Life, by *Aſſer*: And if it be true, that *Horn* lived to the end of K. *Edward*; it is much wonder, that on ſuch occaſion, he did not alſo mention ſome of thoſe Judges by him ſo puniſhed; when there was ſcarce any left but good *John* of *Mettingham*, and *Elias of Bechingham*. And of this the Diſſertations of *Fleta* may be added to all before; as that of Sir *William Thorp* and the Great Judg, in the third Part of *Inſtitutes*, about corrupt *Judges*, and the *Judge's* Oath.

It is very conſiderable, how curious the *Jews* were in Creating, or rather Ordaining of Judges. For indeed the Phraſe of *Ordination* ſeemed to be firſt raiſed from Them. For which I have little to add to Mr. *Selden* on the *Eutychian*, or *Alexandrian* Antiquities, (as old as St. *Mark* the Evangeliſt.) Nor can it be denied but the Jewiſh Judges and Magiſtrates had a very good Right; and ſo uſed (as we find in the Books of *Moſes*, and the *Kings*, and *Tirſhatha's*) to Read and Expound the *Law Moral* as well as *Judicial*. Nay, in this, they ſeemed to have ſome advantage of the *Prieſts*, or *Levites* that had work enough moſt times in that which was but *Ceremonial*. This may Expound thoſe Pieces of Scripture, Old and New; where we find ſome explaining

Scripture; being neither Priests, nor of the Tribe of *Levi*.

And the *Jews* Punishments, of evil Judges, are severe, and most remarkable; nay, where all others were again restored to their Offices after Corporal Punishment, their Lord *Chief Justice* or *President* of their *Sanhedrim*, or any Chief *Justice*, could never be restored again after such punishment; no, not to be as one of his inferour Colleagues. So just he ought to be and circumspect by daily experience, added to his own wisdom.

Our Laws are so just, and so good, in themselves, that there could not be be so much cause of complaints, in all our Gates, (for such were the *Jews Courts of Justice*) if our Judges were such, as they should, and might be. And yet I cannot deny but that there be very great abuses among the Lawyers, and Attorneys, or Solicitors; but if the Judges were as just, and wise as they may be, inferiour Officers would soon amend, or comply for Love or Fear, so much as would prevent Complaints and many of their Causes.

But it is the work of a God and not of a Man, to reform abuses, in all Courts of Justice. *Hercules* did never cleanse so great, so foul a Stable, or a Stall; yet in this also, a wise and just Parliament, will do much, and will need none of my help, or advice.

How tender all should Delegates be, in making Delegates: But in nothing should they be more tender, or more circumspect, then in this of making Judges; For in these of all Delegates, our law is most scrupulous.

Before

Before the Statute of *Merton*, thoſe that held by ſuit Service, were bound to appear in Perſon, becauſe the Suitors were Judges, in cauſes not their own; but by that Statute, they had power given, to make Attorneys; but it was only, *ad Sectas faciendas*, to make, or follow ſuites for them, but not to ſit as Judges: For, (as the Commentator addeth) they could not depute, or make Attornies in a place and act judicial.

I will not, I cannot ſay, the Commons of *England* cannot chooſe, or conſtitute their Judges; but this I ſay, or believe, their delegates ought to be exceeding Curious (I had almoſt ſaid, exceeding Scrupulous) in making Judges, and in bounding them to law, and Juſtice, both in way, as well as *End*. I muſt again repeat it; That it may not ſeem enough to ſettle Judges, juſt and wiſe and good: Nor only to provide, that they may do what is juſt (I ſpeak of end) but men are men, and ought in caſes of ſuch conſequence, to have their Way, their Rule, and Square, (by which they muſt proceed) to be preſcribed in their Patents or Commiſſions, that they may do juſtly too, as well as what is juſt.

To me it ſeemeth to be reaſon, or the law of nature unto men, that the *Supreme Court*, ſhould ſo limit all inferiours, that it may not be left at large, to their liſt or pleaſure, to condemn or ſentence without Hearing, Accuſation, Witneſs, or without ſuch Proceſs and Tryal, as ſhall be clear and plain, and ſo preſcribed in the Patent or Commiſſion.

If it be not ſo done, and expreſſed, I know not what appeal can be, but from the Court, before Judgment: For, what appeal, what writ of *Error*, or what Plea can a man frame upon their Judgment, who have no Rule, no way of proceſs preſcribed, and ſo cannot Err, Tranſgreſs, or Exceed their commiſſion, no, not if they ſhould without all accuſation, proof, or witneſſes condemn one to be ſliced and fryed with exquiſite tortures. They are Judges, but unlimited in way of Proceſs, infinite and purely *Arbitrary*. No they are *Men*, and ſo they muſt be *Rational* and *Juſt*; which was preſuppoſed by them that gave ſo vaſt power.

They may be *Juſt* indeed, and ſo they ſhould, but yet no thanks for this to their *Commiſſion*, if it do not bound, and limit out their way and manner of Proceſs, as it doth their work, and *Object*, or their *End*; which was the wont of Engliſh Parliaments, who were Juſt and wiſe themſelves, that they did ſee or fear it might be poſſible for their *Committees*, to be moſt *Unjuſt* and *Arbitrary*, if they were not moſt exactly limited.

Of all Commiſſions, none were more curiouſly drawn and Pointed out by our Anceſtors, than thoſe of eſpecial *Oyer* and *Terminer*; becauſe the caſes were not only heinous (ſo they ought to be;) but ſuch as for ſome extr ordinary cauſe emergent, ſeemed to be as it were *Extra Judicial*, and ſuch as could not ſtay, and abide the uſual proceſs of the ſettled Courts of Juſtice.

Yet

Yet of theſe alſo did our Fathers take moſt eſpecial care, that they might be *Juſt* (in *Way* as well as *End*) and that they might not be *too High* in *Juſtice*; for it ſeems that they had alſo learned an uſual ſaying of the Antients, *Summum jus eſt injuria*: So that in divers of the Saxons Laws, we find *High Juſtice* (*Summum Jus*) to be as much forbidden as *Injuſtice*. And I ſhould tremble at it, as an ill Omen to hear Authority commanded, the the *Kings Bench* or any other Court, ſhould be now Stiled the Bench of *High-Juſtice*: For in *Juſtice*, the higher men goe up, the worſe, or ſo at leaſt it was eſteemed by our Anceſtors.

Their conſtant limitation was in every ſuch Commiſſion, *Thus* and *thus you ſhall proceed*; *but ſtill according to the Laws and Cuſtoms of England*: *Secundum Legem & Conſuetudinem Angliæ*; and no otherwiſe, that is, as *Fortescue* will ſay, *you ſhall be pittiful in Juſtice, and more merciful then all the world, beſides this Kingdom.* And if ſuch a limitation were not expreſſed, this was enough to prove the Commiſſion, Unjuſt and Illegal; which is ſo well known to all Lawyers, that I need not cite *N. B.* or the *Regiſter* Commiſſions, or *Scrogs's* caſe in *Dyer*, or ſo many elder caſes, in *Edward* the 3*d*. *Henry* the 4*th*. and almoſt all Kings Reigns.

Nay, in King *James*, among the great debates of Uniting *Scotland* to *England*, when it was driven up ſo cloſe, that inſtead of *Secundum Legem & Conſuetudinem Angliæ*, it might be *Secundum Legem & Conſuetudinem Britanniæ*;

tanniæ; It was resolved by all Judges, that there could not be, that little change, but of one word (that doth so limit such Commissions) but by consent of Parliament of both Kingdoms.

And in divers Parliaments of Ed. 1. Ed. 2. Hen. 4th. there were many Statutes made, to limit all Commissions of *Oyer and Terminer*; as that they must never be granted, but before; and to some of the *Judges*, of the *Benches*, or of the Grand *Eyre*. Nor those to be named by *Parties*, but by the *Court*: And with this usual Restriction according to the known clause of the *Statute of Westminster the 2d.* in the Reign of *Edward the 1st.*

But the Printed Statute must be compared with the Roll, and with the 2d of Ed. *the* 3d. for else, there may be in this (as in other Printed Acts) a great mistake, by leaving out, or changing one particle: for that Clause, *except it be for heinous offence*, hath such influence into all the words before; that by the known Common Law a *Supersedeas* doth lye to such Commissions, *quia non enormis Transgressio*; as the Register may teach us.

And although by Law there may be granted a Commission of Association; with a Writ of *Admittance*, of others, to the *Judges*, assigned for *Oyer* and *Terminer*: yet in all those Commissions and Writs the Rule must be prescribed, *quod ad Justitiam pertinet*; and that also according *to the Law and Custom of the Kingdom*, which is so much the Law of *Nature*, that I need not wonder at the great Judg, who in all his *Institutes*, and so many *Reports*, maketh

keth those words absolutely necessary to the work of a *Lawful Commission*.

And for more prevention, or Redress of injustice and Arbitrary Process, were our Ancestors so punctual in requiring *Records* of all Proceedings in the Courts of Justice; which is so agreable to *Reason*, and the Law of *Nature*, That the whole Parliament of *England*, as I humbly conceive, cannot it self proceed in matters of highest concernment, but by *Record*. Much less can it Licence other Courts, to be without, or above *Record* in such Affairs.

It is so well known to be the custom of the Kingdom, that I shall not need to shew it in the Statute of *York*, in *Edw.* 2d. and many others, in affirmance of the great Charter, *nisi per Legem Terræ* (*But by the Law of the Land.*)

And in *Edw.* 3d. it was, in full Parliament declared to be the *Law of the Land*; that none should be put to answer but upon *presentment before Justices, or matter of Record.*

And the 2d. of *Westminster* is very punctual in requiring *Records* for all legal exceptions, (as well as other matters;) and provideth, that in case an *Exception* should not appear on *Record*, the Party must produce the *Judge's Seal*; which may be required by *Writ*, and cannot be denied; no not in such *Exceptions* as the present Court do *over-rule*.

And for Enrolling *Records*, the same Statute provideth, That the King should not Erect Offices, or Elect Officers for *Enrollment*; For that by the Common Law this

this did belong to the Courts themſelves, and Judges therein: As to the Sheriff alſo, to Elect the County *Clerk* for *Enrollments*; ſo that the King himſelf could not Elect him, as we find in *Mitton's* Caſe. So punctual is our Law, in all, concerning *Rolls*, *Enrollments* and *Records*.

Which is alſo the Law of *Nature*; and for many Reaſons. As for that of Appeal, to which all Courts on Earth muſt willingly ſubmit. Nay Heaven it ſelf admits *Appeal*, from its juſtice to its mercy; ſo it would to Juſtice alſo by ſome *Writ of Error* if it could commit an error. But however, that its Judgments may be cleared to be juſt, it alſo proceedeth by Record. For God hearkeneth, as the Prophet ſaith, when ought is good, (when they meet and ſpeak well together; a Record is made, and bound up as a Jewel;) and when evil alſo, ſome are Watchers to Record it. For the Books ſhall be opened, and we ſhall all be judged by the Record of Heaven, and our own Conſciences, which are now foul Draughts, but ſhall then be as fair and clear as thoſe of Heaven it ſelf.

But in Courts on Earth, if there be no Records, there is ſcarce deviſable a legal Traverſe or Tryal, whether all be right, or appeal if any thing be wrong. For what Appeal can any man make from that which doth not appear? but it is only a Tranſient Air or Breath, which may as ſoon be denied as it was ſpoken!

How can Errors, not appearing, be corrected or amended by the Parliament it ſelf, or any other Court, but

but onely that keepeth Records of all our thoughts, as much as of our words or actions.

I may be tedious in shewing how our Law hath ever allowed Appeals in Ecclesiasticals; They were agreed in the Assizes of *Clarendon* in opposition to *Appeals Foreign*, which were first attempted by *Anselm*, as some affirm; but the Date is later. And the Lord *Dier*, of *Appeals*, is now printed in the 4th. part of *Institutes*.

The Judgment of *Delegates*, on such *Appeals*, is called *definitive*: And yet not so but that it may be all redressed by a Court below the Parliament: for which we have the *Commission of Review* granted upon the *Delegates*; nay and upon High Commission it Self, as by a Clause in that Commission appeareth. To which may be added *Killingworth's* Case, and divers others.

Of the Court *Admiral*, much I might add from the Laws of *Olerom* in *Richard* the 1st. and the Rolls of *Henry* the 3d. and *Edward* the 1st. of which also the Commentator on *Littleton's continual Claim*; and the 22 Chapter of the last part of *Institutes*. How it lieth open to the common Law, and to daily *Prohibitions*, may be fully seen in its Complaints to King *James*, which were as fully answered by all the Judges.

It is no Court of Record, and so did all the Judges declare in 8 *Jacobi*; yet it must keep Records enough to ground an *Appeal*; which lieth from thence (as from Courts Ecclesiastical) to *Judges delegate*; of which the 8th of *Elizabeth*, and other Statutes.

County, *Hundred*, *Baron* Courts; and those of *Antient Demesne*, (with all *Close* Writs) are not of *Record*. The *Sutors* are the *Judges* (as was said before) in Cases not their own. And some have thought they did proceed (much by fancie) without legal Proof and Witnesses, till the great Charter, commanding all *Bayliffs* to put no man upon *Oath*, without *faithful Witnesses*. But we have found the Charter long before King *Henry* the 3d. And in that Phrase of *Bayliffs* (which in *France* are Governours and Magistrates, as in eldest Towns or Cities with us) some great Lawyers include all *Judges*, as *Fleta* with the *Mirror*; which also calleth *Coroners* the Peoples *Bayliffs*; and the *Sheriffs* Returns are *de Baliva*.

These inferiour Courts being not of *Record*, held petty Pleas of Debt or Damages, under 40 *s*: (Antient *Demesn* had other prviledges) but not of forceable Trespass, *Vi & Armis* (finable to the Crown.) Yet these also must keep Copies or some such Records as may suffice for *Appeals*. For they may be questioned, and their Proceedings being denied shall be Tryed by *Jury*, and upon their judgments lyeth a Writ of *false judgment*; not a Writ of *Error*.

But in the Case of *Redisseison* the Sheriff is *Judg* by the Statute of *Merton*; and a Writ of *Error* lieth on his judgment. But in Case of *Debt*, *Detinue*, *Trespass*, or other action above 40 *s*. where in the County the Sheriff holdeth Plea by force of a Writ (or Commission) of *Justices*; the *Sutors* are still the *Judges*, and no Writ of *Error*, but false judgment lieth on them. Nor doth

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the *Coroner's* judgment of *Out-Lawry* in the County Court forfeit Goods till it be returned and appear on Record. Nay, the Coroners Certificate, on a *Certiorari*, did not disable the *Out-Law* (although the King might seize his Goods) till the Return of the *Exigent*, *Quinquies Exact.*

But a Writ of *Error* is proper to Record, and from Record, and a Plea of *Nul tiel Record* is not tryable by Witness or *Jury*, but onely by it self in a Court Record. Such are the Sheriffs Turns, and from them (as from *Counties*, *Hundreds*) came the Court *Leets*; which may be held by prescription against the *Great Charter*: In which *Leets* the Steward is *Judge*; as in the *Turns* the Sheriff and Bishop was, till the first *Norman*, who by Parliament exempted the *Clergy* (as was touched before.) But the Laws of *Henry* 1. bring them again into the *Seculars*. So also the 10th. of *Marlbridg*; and before it the Laws of *Clarenden* for all *Barons*, or Tenant *in Capite* to attend the Great Court till Sentence of Life or Member, which continued long in the Parliament also.

The *Turn* enquireth of Common *Nusance*, and of *Felonies*; *de Fractis & medletis*, whence our *Chance*, or *Chaud Medly*; hot Debate or sudden Fray: see the Notes on *Hengham*) but not of Murder, or Death of Man; which alone (of all Felony) belongeth to the Coroner. He was a very antient Officer, and ought to be made a Knight; for which the Register and Rolls of *Edward* the 3d. where a Merchant, chosen Coroner, was removed, *quia communis Mercator*. He must have a

good Estate, and might receive nothing (of Subjects) for doing his Office. But by late Statute he hath a *Mark on Indictment of Murder*: yet upon Death by misadventure he must take nothing. See the Comments on the 1st. of *Westminster*.

The Coroner's Court is of Record; and he may take Appeals as well as Indictments (upon view of the Body) and must enter them, but cannot proceed, but deliver them up to the Justices (which is as antient as the *Great Charter*) for the next Gaol-delivery, or the King's Bench sometimes also; he is *locum tenens* to the Sheriff; and he standeth when the King dieth. When also so many think there is no Sheriff; but it may be more considered.

I must not stay in the Court of *Prepoudres*, (incident to every Fair or Market, as a Court Baron to a Manor) although it be a Court of Record; and a Writ of Error lyeth on its judgment; for which *Jones* and *Hall's* Case in the 10th Part of *Reports*, and in the 4th *Institutes*.

I need not speak of Writs of Error from the Common Pleas to the Kings Bench; from the King's Bench to the Exchequer-Chamber; and from thence (as from the King's Bench also) to the Parliament; or of the known Statute of *Henry* the 6th. making it Felony to steal, withdraw, or avoid Records, or any parcel of Record.

But

But of no *Records*, is the Law more punctual than in of extraordinary Cases, of *Oyer and Terminer*, which were more private oft, and less fixed, being transient on emergent Cases; which yet being heinous, seemed to require most exact *Records*, especially because there might be Appeal so just and needful, if the Judges exceeded but one tittle of their *Commission*.

If it were discontinued or expired, then the *Indictment* and all *Records* were to meet in their proper Center at the King's Bench: but in other Cases, Records of *Oyer and Terminer* were sent into the Exchequer. So in *Edw.* the 3d. As in *Elizabeth*, Results on charitable uses, and the like, were to the Chancery by Act of Parliament.

The *great Seal* was the Soul to inform and actuate the *Body of Records* in all exemplifications from the Rolls; in all Writs Patents or Commissions; and the rather also, that by this nothing of moment might be hudled up, but duly weighed and considered, while it passed so many hands and judgments, as it should before the Sealing.

Nor shall I add, that an Act of Parliament it Self is not pleadable in a Court of Record, but from *Record*, or under the *Seal*; whence the old custom was to remove the Records of Parliament by a Writ of *Certiorari* into the Chancery; thence, by the Lord *Chancellor*, into the Kings Bench; and thence, by a *Mittimus* into the Common Plea and Exchequer; with an usual Writ command-

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ing all the Courts to keep and observe such Acts of Parliament, which of Old were Proclaimed by the Sheriffs, and were put under the Seal; (as we may see by the Proclamation now printed among the Statutes of *Edw.* the 3d.) and they were not hudled into Print in those Days; not of such vertue in Print as on Record, and under the Seal. For there were not then such Printers, or Copiers that (without much caution) our fore-Fathers durst trust with all their Lives and Estates; which by one dash of a Pen the change of a *not*, a *with*, a *to*, a *for* or a *from*, might be soon destroyed or enslaved.

Much less then should a Court of Record be Created but by Record; yea, and that be shewed under the Seal-also. For when the Seal was moulded, our Ancestors ordained that no Jurisdiction should be grantable but under the Seal, which should be known, and obeyed by all the People; as the *Mirror* discourseth at large.

In *Edw.* the 4th. it was resolved by all the Judges, in the *Exchequer-Chamber*, that no man could be a *Judg* or *Justice* by Writ (which was also Sealed) but by open Pattent, or a publick Commission. But the *Lord Chief Justice of England* hath of late no such Commission or Pattent, yet a Sealed Writ; and of Old he was also Created by Pattent till about the end of King *Henry* the 3d. if good Authors deceive me not.

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It seemeth also somewhat disputable, whether he were not included in the Statute of *Henry* the 8th. for Commissions to the Judges, by Letters Patent under the Seal.

However, the words are plain enough, for *Justices of Eyre*; which of Old were also by Writ, as those of *Oyer and Terminer*; but now not to be but by Comission, or Patent under the Great Seal.

Which Commission should also be read and shewed in Court lest there be some kind of *Demurrer*, or exception unto jurisdiction, which hath been in some Cases at the Kings Bench, and may be by Law to all now Judges by Special Commission, except it be produced under the Seal, if the old Books deceive us not; who do do not onely ascribe all jurisdiction to the Seal, but in all legal exceptions ever admit of that to the *Judg*, if he be a Party, or have not jurisdiction, or be otherwise incompetent.

That the Parliament also will never Erect or Create any Court of Record, but by Record, and open Commission under the Great Seal, I do the rather believe, because the Seal is so proper and peculiar to the Parliament, being made by common consent; (of which the *Mirror*, and others at large) and by such common consent used and committed to the special care of the Chancellor, or Lord *Keeper* of *England*, as he was called for keeping that which our Fathers esteemed as the Kingdoms Key or *Clavis*.

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It is well known how King *Henry* the 3d. was brought to acknowledg, That among all great Officers the *Lord Keeper* or *Chancellor* did especially belong to the Choice of the Parliament: and *Ralph Nevil* among others refused to yield up the Seal to the King when it was demanded, saying that he had received it by the Common Councel of the Kingdom, and without their Warrant he would not deliver it; of which both *Matthew Paris*, and *Matthew* of *Westminster*.

From the continual use of this Seal in Parliament, it is the Law and Custom of the Kingdom, that the Lord *Keeper* shall have place in Parliament still to be there with the Seal (although he be often no *Peer*, and have no Vote but) for making and Sealing of Charters, Pattents, Commissions and Writs framed by Parliament.

For although the Register (made or continued by Parliament,) be now so full that there be little need; yet the framing of *New Writs* was a great work of *Old Parliaments*, as appeareth in the Books and Statutes, as in that of *Westminster* the 2d. *de Casu consimili*.

And as if the Parliament had made no Laws at all, but onely New Writs the *Old Modus* brancheth out all the Laws of Parliament into Originals, Judicials and Executives, which all know to be the Division of Writs; Those especially *de Cursu*, drawn by the Cursitors; for *Brevia Magistralia* were let to

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be framed by the *Masters of Chancery*, as appeareth at large in *Bracton* and *Fleta*, and in the Oath of the *Six Clerks*, or other Clerks of Chancery in *Ed.* 3 with that of *Ed.* 1. *de casu continili*; in which Statute it is also provided, that if the *Masters* could not agree in framing such a *new Writ*, they might, if they saw cause, respite the Parties till the next Parliament, that so it might be formed by Advice of all the great Lawyers of the Kingdom.

Yet besides this of making and sealing of *Writs*, there was another work, and great use of the *Masters of Chancery* in Parliament: Which was the *Receiving of Petitions*, (As the Rolls of most times witness) It being the old *Mode*; and others accounted it somewhat against Reason, that Petitions should be taken and brought into the House, by those that were to debate and determine them, and so might at pleasure keep them *Out*, or too hastily might press them in.

Whereas they were to be filled up in course, and so to be debated as they were received, which was therefore entrusted to the care of known and sworn Officers of the Kingdom: Although of late, their work in Parliament be so strangely degenerate from that it was of old: when also beside *Receivers*, there were some appointed for *Tryers of Petitions*, who (as it seemeth) were to enquire of matter of Fact, expressed in the Petition, that it might be cleared and tightly stated before it came to be debated in full Parliament.

I do not deny but theſe *Triers of Petitions* were moſt frequently ſome of the Biſhops, and other Barons: But by this I am not convinced, that the Lords had by *Right* and *Legiſlative* Power, or were *the* ſole *Determiners* of all Petitions, as ſome would infer; or that they were the ſole Judges; except alſo the Petty Jury that are Tryers of Fact, ſhall be eſteemed the ſole Judges of Matters of Law.

And yet I ſhall not deny, but Petitions concerning abuſes or errors in Judicature were often determined by the Lords as the great Judges; but of error in the King's Bench, as Judges above the King, (as was ſhewed before) or from the Exchequer. In Queen *Elizabeths* Time, for the ſeldom meeting, or great Affairs of Parliament, the Writs of Error from the King's Bench were by ſpecial Act of Parliament to be brought before the Judges of the Common Pleas, and Barons of the Exchequer, and by them to be determined.

But with theſe expreſs Limitations, as the Law ſhall require; other than for Errors to be aſſigned, or found, for, or concerning the Juriſdiction of the ſaid Court of Kings Bench, or for want of form in any Writ, Proceſs, Verdict &c. and that after all, *the Records, and all concerning them, be remanded to the King's Bench, as well for execution as otherwiſe, as ſhall appertain; and (with this expreſs Proviſo) That any Party agrieved by ſuch Judgment, in the Exchequer, ſhall and may ſue in Parliament.*

liament for a further and due Examination.

By which I do not see such Parties agreed were absolutely tied to Petition the Lords onely, although it were onely in a Case judicial. Yet I deny not but in *Edward* the 3d. there was a Committee made of a Bishop, two Earls, and two Barons to hear and determine all Petitions complaining of Delays or Grievances in Courts of Justice.

But with great Limitations, so that they must send for the Records and Judges, which were to to be present, and be heard, and then by good advice of the Chancellor, Treasurer, Judges (and other of the Council) to make an Accord; yet so that all be remanded to the Judges before whom the Cause did first depend, who were then to proceed to Judgment according to the Accord of the said Committee.

And in Case it seemed to them to be such as might not well be determined but in full Parliament; that then the said Records or Tenors should be brought by the said Commitee to the next Parliament; it being the Common Law of the Kingdom; and so expressed in all the old Books, that all new, unwonted, difficult matters of consequence should still be brought and submitted to the Judgment of full Parliament, so that all our Judges did, and ought to respit such Causes till the next Parliament, of which there be almost innume-

numerable Precedents in all the Rolls.

Nay, in *Richard* the 2d. there was a Committee of Lords and Commons appointed to hear and determine all Petitions present in that Parliament. But afterwards it was adjudged and declared, That such a Commission ought not to be given, committing or betraying the High Power of Parliament into a few private hands, as we may learn out of *Hemy* the 4th. beside other times.

Yet the *Modi* of *Parliament* admit that some extraordinary Cases, where the Estates could not agree (or the greater part of the Knights, Proctors, Citizens, &c.) there (by consent of the whole Parliament) the Matter might be compromised to 25. chosen out of all Degrees, and to fewer, till at length it might come to 3. who might determine the Case, except that being written it were corrected by Assent of Parliament, and not otherwise.

And this seemeth to be the Law of Nature and right Reason, That Delegates should not delegate others, which was one reason why the Commons never made *Proxies* as the Lords did. Nor might any Committee so determine but there might be Appeal from it to the Parliament. Nor doth the Parliament it self conclude so, but that there may be Appeal from it self to it self, even to its *Justice* if it erre, or at least to its mercy by some motion or Petition.

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In one Parliament of *Richard* the 2d. it was Enacted, that no man condemned by Parliament ſhould move for Pardon; but another Parliament 10 years after did annul this Branch, as unjuſt, unreaſonable and againſt the Law and Cuſtom of Parliament. For from this, which is the higheſt here, there ſtill lieth Appeal from its Self to its Self. For which alſo, by the Laws and Cuſtoms of the Kingdom, there were to be frequent Parliaments, that ſo the errors or omiſſions of one (being ſtill human, and therefore errable) might be corrected and amended in another.

By expreſs Statutes of *Edw.* the 3d. we are to have Parliaments once every year, *and oftner if need be*. They were of Old three or four times a year, as may be found in all the Old Hiſtorians, ſpeaking of the great Feats in the *Militia* in King *Alfred*'s Time, they were to be twice a year; and that at *London* as the *Mirror* affirmeth, which we compared with the Laws of the *Confeſſor*: And I ſpeak alſo of King *Edgars* and *Canutes* Laws for the *Celeberrimus Conventus ex qualibet Saxonia*, which the Great Judg applieth to the Parliament.

Eternity it ſelf would be a Burthen unto him that is not pleaſed with his Being; ſo would Omnipotence to him that is unhappy in his acting: It was therefore goodneſs in God to limit man, as well in Doing as in Being.

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It was alſo the Wiſdom of our Anceſtors to bound and limit out the Being, Acting, and continuing not onely of other Judges, but alſo of Parliaments.

Yet the *Old Modi of Parliament* agree in this, That a Parliament ſhould not be Diſſolved till all Petitions were diſcuſſed and anſwered; and that after all there ſhould be Proclamation made in ſome open place, whether any had a Petition or juſt Addreſs to the Parliament; and if none replied then it was to be Diſſolved.

I need not ſhew the Care of our Anceſtors, or former Parliaments for moſt ſtrict obſervation of their own good Orders and Cuſtoms of Parliament, which are ſuch ſo juſt and reaſonable, that they well deſerve a peculiar Diſcouſe by themſelves; and ſuppoſe it not impoſſible to clear them more by the practice and conſent of moſt Ages in this Kingdom, which might alſo be uſeful for the Times to come.

And although it might be poſſible to find ſome of their old cuſtome fit to be changed; yet my hope is they will retain and obſerve ſuch Rules of right Reaſon, good Orders and Cuſtoms as may ſtill make this an Happy Nation; and that they will be mindful of their great Truſt, for which they are accountable: And however it may be in this World, yet they alſo muſt be judged at his coming, who

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ſhall bring every Work into Judgment with every ſecret Thing, whether it be good, or whether it be evil? And I am not aſhamed both to long and pray for his coming; *who is King of Kings, and Lord of Lords*; The Prince of *Salem*, that is *Peace*, as well as *King of Righteouſneſs*, *Melchizedek*, the Lamb upon the white Thone.

All the Creation groaneth; and the Spirit and the Bride ſaith, come Lord Jeſus, come quickly.

FINIS.

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shall bring every Work into Judgment with every secret Thing, whether it be good, or whether it be evil? And I am not ashamed both to long and pray for his coming; who is King of Kings, and Lord of Lords; The Prince of Salem, that is Peace, as well as King of Righteousness, Melchizedek, the Lamb upon the white Throne.

All the Creation groaneth; and the Spirit and the Bride saith, come Lord Jesus, come quickly.

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